TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 53.

CHARLES P. BARRETT, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED AUGUST 13, 1895.

(15,986.)

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INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 21, 1898.

a THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit.

THE UNITED STATES } Violation of Section- 5440 and 5480,
vs. R. S. U. S.
CHARLES P. BARRETT. }

Transcript of Record.

1 Caption.

THE UNITED STATES OF AMERICA, } *To wit:*
District of South Carolina, }

In Circuit Court, Fourth Circuit.

At a circuit court of the United States for the fourth circuit in and for the district of South Carolina, begun and holden at Columbia, in the district aforesaid, on the fourth Monday in November, 1894, before the Honorable Wm. H. Brawley, United States judge for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such cases made and provided, the following procedings were had:

THE UNITED STATES
against
CHARLES P. BARRETT, THOS. J. HANNON, J. WESLEY OWENS, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine.

Be it remembered that heretofore, to wit, on the 3rd day of December, 1894, before the judge of the said court for the district of South Carolina, the said United States indicted Charles P. Barrett, Thos. J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine, defendants, citizens of the district of South Carolina, in a bill of indictment filed by the United States attorney, upon the affidavits and warrants; which bill is in the words and tenor following:

2 *Affidavit of Fred. D. Peer.*

THE UNITED STATES OF AMERICA, } *To wit:*
Western District of South Carolina, }

United States District Court.

Fred. D. Peer, post-office inspector, personally comes before me and on oath says that he is informed and verily believes that

Charles P. Barrett, Thomas J. Hannon, & Wm. L. Tinsley, on or about the 7th day of August, A. D. 1893, at Spartanburg, in the county of Spartanburg, in the district aforesaid, and within the jurisdiction of this court, did violate sections 5440 & 5480 of the Revised Statutes by conspiring together to commit offences against the United States, and to defraud the United States, and by devising a scheme to defraud the United States, and in executing said scheme placed or caused to be placed certain letters and cards in the post-offices of the United States to be sent through said post-offices, and did receive letters therefrom, and as in that behalf required by law, but contrary to the power, force, and effect of the statutes of the United States in such case made and provided.

FRED. D. PEER,
P. O. Inspector.

Sworn to and subscribed before me, at Spartanburg, this 7th day of Aug., A. D. 1893.

ARCH. B. CALVERT,
United States Commissioner.

3 *Warrant.*

THE UNITED STATES OF AMERICA, }
Western District of South Carolina. }

OFFICE COMMISSIONER CIRCUIT AND DISTRICT COURTS OF UNITED STATES FOR SOUTH CAROLINA.

By Arch. B. Calvert, commissioner of circuit & district courts of United States for South Carolina, to George I. Cunningham, U. S. marshal, or his deputies:

Whereas complaint on oath has been made unto me by Fred. D. Peer, post-office inspector, that he is informed and verily believes that Charles P. Barrett, Thomas J. Hannon, & William L. Tinsley did in the year 1893 violate sections 5440 & 5480 of the Revised Statutes of the United States by conspiring together to commit offenses against the United States and to defraud the United States, and by devising a scheme to defraud, did in executing said scheme place or cause to be placed certain letters and cards in the post-office of the United States (and received letters and cards from the post-office) to be sent through the post-office establishment contrary to law:

These are therefore to command you to apprehend the said Charles P. Barrett, Thomas J. Hannon, & Wm. L. Tinsley and bring them before me to be dealt with according to law.

Given under my hand and seal, at Spartanburg, the 7th day of August, one thousand eight hundred and ninety-three.

ARCH. B. CALVERT, [SEAL.]
Com. of Circuit & District Courts of U. S. for So. Car.

Approved:
B. A. HAGOOD,
Ass't U. S. Attorney.

Adjudication in commissioner's court. Def'ts bound over to Jan'y term district court this 2nd September, 1893.

ARCH. B. CALVERT,
U. S. Commissioner.

Filed Feb. 27, 1894.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

4 *Affidavit of Fred. D. Peer.*

THE UNITED STATES OF AMERICA, } *To wit:*
District of South Carolina, }

United States District Court.

Fred. D. Peer, post-office inspector, personally comes before me and on oath says that he is informed and verily believes that Charles P. Barrett and John T. Tillman, on or about the 10th day of August, A. D. 1893, at Spartanburg, in the county of Spartanburg, in the district aforesaid and within the jurisdiction of this court, did violate sections 5440 & 5480 by conspiring together to commit offences against the U. S., and, to defraud the U. S. by devising a scheme to defraud, did in executing said scheme place or cause to be placed certain letters and cards in the post-office of the U. S. to be sent through the mails, and did receive letters and cards from the post-office not as in that behalf required by law, but contrary to the power, force, and effect of the statutes of the United States in such case made and provided.

FRED. D. PEER,
P. O. Inspector.

Sworn to before me, at Greenville, this 10th day of Aug., A. D. 1893.

ARCH. B. CALVERT,
United States Commissioner.

5 *Warrant.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

OFFICE COMMISSIONER CIRCUIT & DISTRICT COURTS
OF UNITED STATES IN SOUTH CAROLINA.

By Arch. B. Calvert, commissioner of the circuit & district courts of the United States for said district, to the United States marshal or his deputies:

Whereas complaint on oath has been made unto me by Fred. D. Peer, post-office inspector, that he is informed and verily believes that Charles P. Barrett and John T. Tillman, on or about the 10th day of August, A. D. 1893, in the county of Spartanburg, S. C., did violate sections 5440 & 5480 by conspiring together to commit offences against the U. S. and to defraud the U. S., and, by having

devised a scheme to defraud, did in executing said scheme place or cause to be placed certain letters in the post-office of the United States to be sent through the mail, and did receive letters and cards from the post-office contrary to law:

These are therefore to command you to apprehend the said Charles P. Barrett & John T. Tillman and bring them before me to be dealt with according to law.

Given under my hand and seal, at Greenville, S. C., the 10 day of August, one thousand eight hundred & ninety-three.

ARCH. B. CALVERT, [SEAL.]
Com. of Circuit & District Courts of U. S. for S. C.

Approved:
B. A. HAGOOD,
Ass't U. S. Attorney.

Adjudication in Commissioner's Court.

This 1st day of Sept., 1893, def'ts bound over to Jan'y term district court.

ARCH. B. CALVERT,
U. S. Commissioner.

Filed Feb. 27, 1894.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

6 *Affidavit of Fred. D. Peer.*

UNITED STATES OF AMERICA,
Western District of South Carolina, } *To wit:*

United States District Court.

Fred. D. Peer, P. O. inspector, personally comes before me and on oath says that he is informed and verily believes that Charles P. Barrett, A. J. Fisher, and John S. Fisher, on or about the 13th day of October, A. D. 1893, at Spartanburg, in the county of Spartanburg, in the district aforesaid, and within the jurisdiction of this court, did violate sections 5440 & 5480 of the Revised Statutes by conspiring together to commit offences against the United States, and, by devising or intending to devise a scheme to defraud, did place or cause to be placed certain letters and cards in the post-office of the U. S. to be sent through the Post-office Department, and did receive letters therefrom in carrying out said scheme to defraud, contrary to the power, force, and effect of the statutes of the United States in such case made and provided.

FRED. D. PEER,
P. O. Inspector.

Sworn to before me, at Spartanburg, this 13th day of October, A. D. 1893.

ARCH. B. CALVERT,
United States Commissioner.

7 *Warrant.*

THE UNITED STATES OF AMERICA, }
Western District of South Carolina. }

OFFICE COMMISSIONER CIRCUIT AND DISTRICT COURTS
OF UNITED STATES FOR SOUTH CAROLINA.

By Arch. B. Calvert, commissioner of circuit & district courts of the United States for South Carolina, to George I. Cunningham, U. S. marshal, or his deputies:

Whereas complaint on oath has been made unto me by Fred. D. Peer, P. O. inspector, that he is informed and verily believes that Charles P. Barrett, A. J. Fisher, and John S. Fisher did in the year 1893 violate sections 5440 & 5480 of the Revised Statutes of the United States by conspiring together to commit offenses against the United States, and, by devising or intending to devise a scheme to defraud, did place and cause to be placed certain letters and cards in the post-office to be sent through the Post-office Department, and did receive letters therefrom in carrying out said scheme to defraud:

These are therefore to command you to apprehend the said Charles P. Barrett, A. J. Fisher, and John S. Fisher and bring them before me to be dealt with according to law.

Given under my hand and seal, at Spartanburg, the 13th day of October, one thousand eight hundred and ninety-three.

ARCH. B. CALVERT, [SEAL.]
Com. of Circuit & District Courts of U. S. for S. C.

Approved:
B. A. HAGOOD,
Ass't U. S. Attorney.

Adjudication in Commissioner's Court.

Defendants bound over to January special term, 1894, this 25th day of October, 1893.

ARCH. B. CALVERT,
U. S. Commissioner.

Filed Feb. 27, 1894.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

8 *Recognizance of Charles P. Barrett.*

UNITED STATES OF AMERICA, }
South Carolina District. }

Be it remembered that on the 20th day of February, in the year of our Lord one thousand eight hundred and ninety-four, personally appeared before me Charles P. Barrett, principal, and James A. Griffin, surety, and W. C. Fisher, surety, who acknowledged them-

selves to be jointly and severally indebted to the United States of America in the sum of fifteen hundred dollars, to be levied on their several lands and tenements, goods and chattels, respectively, to and for the use of the said United States of America if the above-mentioned Charles P. Barrett shall fail in performing the condition underwritten.

The condition of this recognizance is such that if the said Charles P. Barrett shall personally appear before the district judge of the United States of America at the (present) court of the said United States of America for the district of South Carolina, now being holden at the usual place of judication, in Greenville, So. Ca., then and there to answer to the charge of a conspiracy under section 5480 of the Revised Statutes of the United States, and to do and receive what shall be enjoined by the court, and not to depart the court without license, then this recognizance to be void, or else to remain in full force and virtue.

CHARLES P. BARRETT. [SEAL.]
JAS. A. GRIFFIN. [SEAL.]
W. C. FISHER. [SEAL.]

Taken and acknowledged the day and year above written before me—

E. M. SEABROOK,
C. D. C. U. S., S. C.

Filed Feb. 27, 1894.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

9 UNITED STATES OF AMERICA, }
District of South Carolina. }

Personally appeared before me, E. M. Seabrock, clerk of U. S. dist. court for the district of South Carolina, James A. Griffin and W. C. Fisher, who, being duly sworn, saith on oath that they are sureties on the within bond, and that they are worth the amount of the bond over and above their liabilities and homestead exceptions.

JAS. A. GRIFFIN.
W. C. FISHER.

Subscribed and sworn to before me this 20th day of February, 1894.

E. M. SEABROOK,
C. D. C. U. S., Dist. S. C.

10 *Bill of Indictment.*

THE UNITED STATES OF AMERICA, }
District of South Carolina, } *To wit:*

In the Circuit Court.

At a stated term of the circuit court of the United States for the district of South Carolina, begun and holden at Columbia, within and

for the district aforesaid, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and ninety-four, the jurors of the United States of America within and for the district aforesaid upon their oaths respectively do present—

That Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine, together with divers other evil-disposed persons to the jurors aforesaid unknown, late of the district aforesaid, on the first day of July, in the year of our Lord one thousand eight hundred and ninety-two, at Spartanburg, in the State of South Carolina aforesaid, in the district aforesaid and within the jurisdiction of this court, being persons of evil minds and dispositions, wickedly devising and intending to commit the offence against the United States hereinafter set forth, fraudulently, maliciously, and unlawfully did combine, conspire, confederate, and agree together between and among themselves to commit against the United States this offense—that is to say, that they, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine, should devise a scheme and artifice to defraud Cornish and Company, the Smith Premier Typewriter Company, the Frowbridge Piano Company, the Knabe Piano Company, the Whitman Saddle
11 Company, A. H. Andrews and Company, C. Irving Walker, Jr., & Co., E. M. Andrews, J. W. Fuller & Co., A. B. Farquhar & Co., J. W. Felder & Co., Stokes Manufacturing Company, Ludden & Bates, Gonzales & Withers, Mosler Bohman & Co., J. H. Nunnally, Gates Desk Company, Thomas & Barton, Work Brothers and Company, Taylor Brothers and Company, Gilreath & Patton, N. W. Trump, and James T. Tinsley & Company, and divers other persons to the jurors aforesaid unknown, to be effected by opening correspondence with them and each of them respectively by means of the post-office establishment of the United States, and by inciting them and each of them in open correspondence with them, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine, by means of said post-office establishment, which said scheme and artifice was the obtaining articles of merchandise from the said Cornish and Company, the Smith Premier Typewriter Company, the Frowbridge Piano Company, the Knabe Piano Company, the Whitman Saddle Company, A. H. Andrews and Company, C. Irvine Walker, Jr., and Company, E. M. Andrews, J. W. Fuller and Company, A. B. Farquhar and Company, J. W. Felder and Company, Stokes Manufacturing Company, Ludden and Bates, Gonzales & Withers, Mosler Bohman & Company, J. H. Nunnally, Gates Desk Company, Thomas & Barton, Work Brothers & Com-

pany, Taylor Brothers & Company, Gilreath & Patton, N. W. Trump, and James G. Tinsley & Company, and said divers other persons, as vendors thereof, with intent to defraud them, the said vendors, of payment therefor and of their property therein and to cheat and defraud them of the same; and having devised such scheme and artifice aforesaid, to be effected by means of the post-office establishment, as aforesaid, that they, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher,
12 John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thomson, John D. O'Bryant, William M. Hatcher, and James R. Burdine, should place and cause to be placed certain letters in certain post-offices of the United States to be sent and delivered by said post-office establishment.

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and caused to be placed in the post-office of the United States at Owens a certain postal card to be sent and delivered by said post-office establishment, addressed to Mosler Bohman and Company, at Cincinnati, Ohio, of which said postal card the following is a copy:

"OWENS, S. C., *July* 19, '92.

"My wife is postmaster here. I need a good safe, weighing, say, 1,500 pounds. Send best prices, terms, &c., &c.

"Respectfully, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson,
13 John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Owens a certain letter to be sent and delivered by said post-office establishment, addressed to Mosler Bohman and Company, at Cincinnati, of which said letter the following is a copy:

"OWENS, S. C., *July* 25, 1892.

"Mosler Bohman & Co., Cincinnati.

"SIRS: Will take No. 5 at $10 cash and residue in 7 monthly instalments. Enclosed find order accordingly. Ship to Spartanburg, S. C.

"Respectfully, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederact, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at McElrath a certain letter to be sent and delivered by said post-office establishment, addressed to Mosler Bohman & Company, at Cincinnati, Ohio, of which said letter the following is a copy:

"MCELRATH, SPARTANBURG CO., S. C., *Aug. 9th*, 1892.

"Mosler Bohman & Co., Cincinnati, O.

"SIRS: I desire a safe weighing, say, 1,500 lbs., about No. 5.
14 I wish to get it on instalments. Name your best terms, &c.
"I am postmaster here.
"Yours truly, ROBERT J. McELRATH."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederation, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Wyatts a certain postal card to be sent and delivered by said post-office establishment, addressed to "Mosler Bohman & Co.," Cincinnati, Ohio, of which said postal card the following is a copy:

"WYATTS, SPARTANBURG CO., S. C., *Aug.* 10, 1892.

"I am P. M. here. I desire a good safe, on the instalment plan, weighing about 1,500 lbs.—say No. 5. Give me your best terms, prices, &c.

"Yours truly, R. C. WYATT."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, Robert J. McElrath, Edward B. Lowe, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Spartanburg a certain postal card to be sent and delivered by said post-office establishment, addressed to J. N. Nunnally, Atlanta, Georgia, of which said postal card the following is a copy:

"SPARTANBURG, S. C., 19 *Aug.*, 1892.

"I have a 'Hammond.' What can you sell me ribbons at? Have you any green color and any blue color?

"Yours truly, JOHN T. TILLMAN."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederation, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Wyatts a certain letter to be sent and delivered by said post-office establishment, addressed to Mosler Bohman and Company, at Cincinnati, Ohio, of which said letter the following is a copy:

"Office of R. C. Wyatt, dealers in fertilizers.

"WYATTS, S. C., *Aug.* 25, 1892.

"Mess. Mosler Bohman & Co., Cincinnati, Ohio.

"SIRS: I have this day signed order for safe, which I hope will be satisfactory and receive your earliest attention. Please send notes, &c. Let me hear from you on return mail.

"Yours truly, R. C. WYATT.

"Please ship to R. C. Wyatt, Spartanburg, S. C."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination,

conspiracy, confederation, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Wyatts a certain letter to be sent and delivered by said post-office establishment, addressed to Gates Desk Company, at Greenville, South Carolina, of which said letter the following is a copy:

"Office of R. C. Wyatt, dealer in fertilizers.

"WYATTS, S. C., *Sept.* 1, 1892.

"Gates Desk Co., Greenville, S. C.

"SIRS: I desire to buy one of your desk- on the installment plan. Will you give me your rock bottom prices, terms, &c., on return mail?

"Yours truly, R. C. WYATT."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the
17 United States at Spartanburg a certain letter to be sent and delivered to Thomas & Barton, at Augusta, Ga., of which said letter the following is a copy:

"SPARTANBURG, S. C., *September* 15, 1892.

"Thomas & Barton, Augusta, Ga.

"DEAR SIRS: I wish to buy a piano. I am one of these who think that in the end a good article is the cheapest. I desire to buy one that will cost about $500. Times are tight indeed, and I wish rock-bottom prices. I am impressed with the idea that the Everett is one of the best. I saw your advertisement in the Columbia State. My idea is that I can buy a piano cheaper from a large dealer than from a local dealer. Hence I write directly to you. Awaiting to hear from you regarding prices, terms, &c., &c., I am,

"Yours respectfully, J. T. TILLMAN."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy,

and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Spartanburg a certain letter to be sent and delivered by the said post-office establishment, addressed to J. H. Nunnally, Atlanta, Georgia, of which said letter the following is a copy:

"SPARTANBURG, S. C., *September* 16, 1892.

"Mr. J. H. Nunnally, Atlanta, Ga.

18 "DEAR SIR: I am the only person in this city who owns a Hammond typewriter. I am satisfied of its superiority. I am preparing to open up a music-house here and would like to procure the agency for the Hammond in connection therewith. My judgment is that I can sell many of them. Please let me hear from you in reference to the subject, saying if it suits you, what commissions you can allow, &c., &c. My judgment is that if the business is talked up and worked up it will pay you and me too. The demand for these instruments is growing, and it behooves those who have the sale of them to try and get their instruments started in each locality.

"Yours truly, J. T. TILLMAN."

And the jurors aforesaid by their oath aforesaid do further present that in further pursuance and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice and to carry out the combination, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Spartanburg a certain letter to be sent and delivered by said post-office establishment, addressed to Work Brothers & Co., at Chicago, Illinois, of which said letter the following is a copy:

"I have had dealings with Mr. Owens for two or three years and he has always paid me promptly.

"Yours, BUNYAN LOWE."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and to carry out the combination, con-
19 spiracy, confederation, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence

Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Wyatts a certain letter to be sent and delivered by said post-office establishment, addressed to Work Brothers and Company, at Chicago, Illinois, of which said letter the following is a copy:

"Office of R. C. Wyatt, dealer in fertilizers.

"WYATTS, S. C., *Oct.* 3, 1892.

"Messrs. Work Brothers & Co., Chicago, Ill.

"SIRS: According to my judgment Mr. J. W. Owens, of Owens, S. C., is a responsible man for his contracts, and his record as a debt-payer is remarkably favorable.

"Yours truly, R. C. WYATT."

And the jurors aforesaid by their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, — confederation among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederation, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Low, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Spartanburg a certain letter to be sent and delivered by said post-office establishment, addressed to J. H. Nunnally, at Atlanta, Georgia, of which said letter the following is a copy:

"John T. Tillman, merchandise & commissioner broker, No. 8 Kennedy place.

"P. O. box 143.

"SPARTANBURG, SOUTH CAROLINA, *October* 7, 1892.

"Mr. J. H. Nunnally, Atlanta, Ga.

20 "DEAR SIR: I have about effected a sale of one of your typewriters, Universal Key-board, to Mr. Edgar B. Lorud, of this place, who is in the sewing-machine business. I told him that you would send it on fifteen days' trial, he to pay the express both ways, if he did not take it at the expiration of that time. I understand you to say that the price is $95, $25 cash and the balance in monthly payments of $10 each. You can send it on by express. I can have him to fix up the papers if you prefer it that way—that is, that he is to return it in 15 days or arrange the matter in the way above indicated.

"Let me hear from you at once.

"Yours very truly, JNO. T. TILLMAN."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said con-

spiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Spartanburg a certain letter to be sent and delivered by said post-office establishment, addressed to J. H. Nunnally, at Atlanta, Georgia, of which said letter the following is a copy:

"SPARTANBURG, SOUTH CAROLINA, *October* 12, 1892.

"Mr. J. H. Nunnally, Atlanta, Ga.

"DEAR SIR: I am in receipt of your communication of yesterday saying that you would send an 'Ideal' and 'Universal' to me for Lowe and Owens on 15 days' trial soon. Send two type wheels with each machine, for I happen to know that two parties desire two. Send for the Universal the following Nos. 23 and 24.
21
" " " Ideal " " " 1 " 2.
If, however, you find it as convenient to do so, you can substitute the type you write me on, the back handwriting, as a substitute for one of the smaller sorts.

"Yours very truly, JNO. T. TILLMAN."

And the jurors aforesaid upon their oaths aforesaid do further present that in pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so made as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy and confederacy and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine, at Owens, South Carolina, did place and cause to be placed in the post-office of the United States at Owens aforesaid a certain letter to be sent and delivered by means of said post-office establishment of the United States, addressed to Cornish & Company, at Washington, in the State of New Jersey, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, assistant postmaster.

"OWENS, S. C, *Oct.* Oct. 13, 1892.

"Mess. Cornish & Co., Washington, N. J.

"GENTLEMEN: I saw the piano which you recently sold to R. C. Wyatt for $275.00, and I am well pleased with it. I will take a duplicate of it at the same price and the same terms. If this suit

you, you can ship at once. My shipping point is Spartanburg, S. C.

"Yours respectfully, J. W. OWENS."

22 And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid, the said J. Wesley Owens, at Owens, in the county of Spartanburg aforesaid, on the thirty-first day of October, in the year of our Lord one thousand eight hundred and ninety-two, did place and caused to be placed in the post-office of the United States at Owens aforesaid a certain letter to be sent and delivered by said post-office establishment, addressed to the Knabe Piano Company, at New York, in the State of New York, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., *Oct.* 31, 1892.

"Knabe Piano Co., New York, N. Y.

"GENTLEMEN: Please send me a catalogue and prices of your pianos, &c.; also terms and guarantee.

"Respectfully yours, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederation, and agreement aforesaid for the purposes aforesaid, the said J. Wesley Owens, at Owens, in the county of Spartanburg aforesaid, on the ninth day of November, in the year of our Lord one
23 thousand eight hundred and ninety-two, did place and cause to be placed in the post-office of the United States at Owens aforesaid a certain letter to be sent and delivered by said post-office establishment, addressed to the Smith Premier Typewriter Company, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., 11, 9, 1892.

"GENTLEMEN: Please write me your very best terms on your Smith Premier, with base board, cover, and stand. I can buy the Hammond for $100.00, paying $25.00 when receive machine and other on monthly payments, $10.00 each; but I find that the S. P. has features which surpass the Hammond in many respects, and if you will make as reasonable an offer as I can buy the Hammond I may buy the S. P.

"Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederation, and agreement aforesaid for the purposes aforesaid, the said J. Wesley Owens, at Owens, in the county of Spartanburg aforesaid, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and ninety-two, did place and cause to be placed in the post-office of the United States at Owens aforesaid a certain letter to be sent and delivered by said post-office establishment, addressed to William Knabe and Company, at Baltimore, Maryland, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., 11, 14, 1892.

24 "Mess. Wm. Knabe & Co. *Mess. Knabe,* Baltimore, Md.

"GENTLEMEN: What is the very best terms that you will sell style 3 on? Can you refer me to some individual in or one of the adjoining S. C. that has used this piano, and what is our guarantee?

"Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederation, and agreement aforesaid for the purposes aforesaid, the said J. Wesley Owens, at Owens, in the county of Spartanburg aforesaid, on the twenty-first day of November, in the year of our Lord one thousand eight hundred and ninety-two, did place and cause to be placed in the post-office of the United States at Owens aforesaid a certain letter to be sent and delivered by said post-office establishment, addressed to the Smith Premier Typewriter Company, at Baltimore, Maryland, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST OFFICE,
"OWENS, S. C., 11, 21, 1892.

"I will take one of your machines at $100.00, including base board, cover, and stand. I prefer the ribbon inked purple. You can refer to T. O. Mink, Spartanburg; E. B. Lowe, Spartanburg, and R. C. Wyatt, Wyatts, as to my responsibility.

"Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out

the combination, conspiracy, confederation, and agreement
25 aforesaid for the purposes aforesaid, the said J. Wesley Owens, at Owens, in the county of Spartanburg aforesaid, on the twenty-third day of November, in the year of our Lord one thousand eight hundred and ninety-two, did place and caused to be placed in the post-office of the United States at Owens aforesaid a certain letter to be sent and delivered by said post-office establishment, addressed to the Smith Premier Typewriter Company, at Baltimore, Maryland, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., 11, 23, 1892.

"Smith Premier Typewriter Co., Baltimore, Md.

"GENTLEMEN: I received your letters and catalogue some time ago. You did not state the terms that you sell on. I gave reference, and I suppose that you have corresponded with them. If you will give me your terms, &c., I may order from you. I have been thinking about buying a Hammond.

"Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves had, so as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederation, and agreement aforesaid for the purposes aforesaid, the said J. Wesley Owens, at Owens, in the county of Spartanburg aforesaid, on the twenty-eighth day of November, in the year of our Lord one thousand eight hundred and ninety-two, did place and cause to be placed in the post-office of the United States at Owens aforesaid a certain letter to be sent and delivered by said post-office establishment, addressed to William Knabe and Company, at Baltimore, Maryland, of which said letter the following is a copy:

26 "M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., *Nov.* 28, '92, *189.*

"Mess. Wm. Knabe & Co., Baltimore, Md.

"GENTS: I will take your #3 Grand—price, $900—one-fifth cash and the other on the instalment plan. Please let me know when you will ship & how & when you desire me to remit.

"Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect said scheme and artifice, and to carry out the combination, conspiracy, confederation, and agreement aforesaid for the purposes aforesaid, the said J.

Wesley Owens, at Owens, in the county of Spartanburg aforesaid, on the fifth day of December, in the year of our Lord one thousand eight hundred and ninety-two, did place and cause to be placed in the post-office of the United States at Owens aforesaid a certain letter to be sent and delivered by said post-office establishment addressed to Whitman Saddle Company, at New York, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., *Dec.* 5, 1892.

"Whitman Saddle Co., New York.

"GENTS: Ship me the following outfit: One Park saddle, # 8—price, $75.00; saddle cloth, # 2, $5.00, to match saddle; also
27 style # *No.* 354, $8.00; please send by express.

"Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purposes aforesaid, the said J. Wesley Owens, at Owens, in the county of Spartanburg aforesaid, on the fifth day of December, in the year of our Lord one thousand eight hundred and ninety-two, did place and cause to be placed in the post-office of the United States at Owens aforesaid a certain letter to be sent and delivered by said post-office establishment, addressed to A. H. Andrews and Company, at Chicago, Illinois, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., *Dec.* 5, 1892.

"Messrs. A. H. Andrews & Co., Chicago, Ill.

"GENTLEMEN: Some time ago I wrote to you prices of your office furniture, but you did not state the terms that you sell on. If you sell on as long as thirty days' time, I will take the following: # 21 B, high curtain desk—price, $70.00; # 41, office table—price, $32, 5 ft.; also one, # 94, chair, leather seat—price, $10; less discount, 10%; would like to have these goods as early as convenient.

"Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among
28 themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purposes aforesaid, the said J. Wesley Owens, at Owens, in the county

of Spartanburg aforesaid, on the twelfth day of December, in the year of our Lord one thousand eight hundred and ninety-two, did place and cause to be placed in the post-office of the United States at Owens aforesaid a certain letter to be sent and delivered by said post-office establishment, addressed to A. H. Andrews and Compan*t*, at Chicago, Illinois, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., *Dec.* 12, 1892.

"Messrs. A. H. Andrews & Co., Chicago, Ill.

"GENTLEMEN: Yours of the 7th is at hand. If it is just as convenient, I would prefer the goods in antique oak. Please ship via Inman, S. C.

"Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purposes aforesaid, the said J. Wesley Owens, at Owens, in the county of Spartanburg aforesaid, on the fifteenth day of December, in the year of our Lord one thousand eight hundred and ninety-two, did place and cause to be placed in the post-office of the United States at Owens aforesaid a certain letter to be sen*d* and delivered by said post-office establishment, addressed to the Trowbridge Piano Company, at Boston, Massachusetts, of which said letter the following is a copy:

29 "M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST OFFICE,
"OWENS, S. C., *Dec.* 15, 1892.

"Trowbridge Piano Co., Boston, Mass.

"GENTLEMEN: Please send me catalogue and prices of your pianos. Do you sell on installment plan? I want a piano worth about five hundred dollars and I want your very best prices and terms.

"Very resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purposes aforesaid, the said J Wesley Owens, in the county of Spartanburg aforesaid, on the nineteenth day of December, in the year of our Lord one thousand eight hundred and ninety-two, did place and cause to be placed in the post-office of the United States at Owens aforesaid a certain letter to be

sent and delivered by said post-office establishment, addressed to th Whitman Saddle Company, New York, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., *Dec.* 19*th*, 1892.

"Whitman Saddle Co., New York.

"GENTLEMEN: I am very much obliged to you for giving
30 my order so prompt attention, but I wanted the outfit on thirty days' time. I thought that I referred you to the following parties as to my responsibility, &c.: E. B. Lowe, Spartanburg; E. J. Harrison, of this place, and J. R. Atkins, Wingo.

"Very resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Owens, S. C., a certain letter to be sent and delivered by said post-office establishment, addressed to Taylor Brothers and Company, Chicago, Illinois, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., *Oct.* 24, 1892.

"Mess. Taylor Bros. & Co., Chicago, Ill.

"GENTLEMEN: You can ship me the following as samples, and if I find that I can handle your goods to advantage will give you a large spring order: ½ doz. No. 586 XXX silk hat-, $27; ½ doz. No. 616 men's black ass't'd No. 3, $7.50; ½ doz. No. 653 men's black income, $15.00; ½ doz. No. 782 boy's blue, $3.00; ½ doz. No. 788 boy's black, $4.50; ½ doz. No. 1205 kid gloves, $6.75; ½ doz. No. 1229 white calf working G., $4.25; ½ doz. No. 1421 ging. umbrella-,
31 $2.25; ½ doz. No. 1425 silk sateen, $4.25; ½ doz. No. 1430 8-rib silk serg. um., $12.00.

"Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice

aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, William M. Hatcher, John D. O'Bryant, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Owens a certain letter to be sent and delivered by said post-office establishment, addressed to Gilreath & Patton, at Greenville, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., *Oct. 24th*, 1892.

"SIR: What can you express to me at Inman No. 51 brass mam-outh fount, with racket No. 5 & student's lamp No. 398, ni-kel, for? If the two will not cost me over $12.00, you can send them and I will remit at once.

"Resp'ly yours, J. W. OWENS."

And the jurors aforesaid by their oaths aforesaid do further present that in further pursuance of and according to the conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice
32 aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Spartanburg a certain letter to be sent and delivered to J. H. Nunnally, at Atlanta, Georgia, of which said letter the following is a copy:

"SPARTANBURG, SOUTH CAROLINA, *October* 26, 1892.

"Mr. J. H. Nunnally, Atlanta, Ga.

"DEAR SIR: Some time since you wrote me that you had a shipment of typewriters on the road and when they arrived you would send me two for fifteen days' trial for the two prospective purchasers that I have on hand. I assume that you have overlooked it, else I would not call your attention to it. I have advertised for the sale of both sorts—Ideal and Universal—and several persons have called to see the Ideal, the one I have being the Universal, but I regret that I have been unable to accommodate them. Hoping to hear from you soon, I am

"Yours very truly, JNO. T. TILLMAN."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among them-

selves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, William H. Hatcher, John D. O'Bryant, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United
33 States at Owens a certain letter to *to* be sent and delivered by said post-office establishment, addressed to Gilreath & Patton, at Greenville, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., *Oct.* 31, 1892.

"Mess. Gilreath & Patton, Greenville, S. C.

"GENTLEMEN: I will take the lamps at prices mentioned. Send them to Inman. You can refer to F. W. Wagener & Co., Charleston, S. C.; Pelzer-Rogers Fertilizer Co., Charleston, as to my standing, &c.

"Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, confederacy, conspiracy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owe-s, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Owens a certain letter to be sent and delivered by said post-office establishment, addressed to C. Irving Walker and Company, at Charleston, South Carolina, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., *Nov.* 2, 1892.

34 "GENTLEMEN: Please send me a catalogue & very best prices on your machines, also your terms, &c.

"Resp'ly yours, J. W. OWNENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy,

and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Spartanburg a certain letter to be sent and delivered to J. H. Nunnally, at Atlanta, Georgia, of which said letter the following is a copy:

"SPARTANBURG, SOUTH CAROLINA, *Nov.* 3, 1892.

"Mr. J. H. Nunnally, Atlanta, Ga.

"DEAR SIR: I have struck something now that I think will materialize. Converse College, the finest female institute in the South, which started up here about two years since, is now arranging to teach typewriting. I think the Hammond will suit the young maidens far better than any other, being so much lighter, &c. They have one Caligraph at the college, belonging to the pres't, but, in the first place, it is a No. 2; then it is old, out of alignment, &c., &c. I went up there today and carried my instrument and showed its advantages by practice. I hope that you will send me an Ideal and Universal at once and I will let them remain there on fifteen days' trial, and will also go up every day or so and show the maids how to operate it. I think I made a good impression today. The pres't is a good friend of mine. So let the two machines come forward at once; also send the two for the other two men to whom we are about to sell instruments.

"Yours very truly, JNO. T. TILLMAN."

"P. S.—Send green or blue ribbons; also send two type wheels for each machine.

"J. T. T."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at McElrath a certain letter to be sent and delivered by said post-office established, addressed to J. H. Nunnally, at Atlanta, Georgia, of which said letter the following is a copy:

"R. J. McElrath, postmaster. N. E. McElrath, ass't postmaster.

"UNITED STATES POST-OFFICE,
"MCELRATH, S. C., *Nov.* 4, 1892.

"Mr. J. H. Nunnally, Atlanta, Ga.

36 "DEAR SIR: I wish to buy a Hammond. Write me prices, terms, and so on. I live in Spartanburg Co.

"Yours truly, R. J. McELRATH."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Spartanburg a certain letter to be sent and delivered by said post-office establishment to J. H. Nunnally, Atlanta, Georgia, of which said letter the following is a copy:

"SPARTANBURG, SOUTH CAROLINA, *Nov.* 7, 1892.

"Mr. J. H. Nunnally, Atlanta, Ga.

"DEAR SIR: I again call your attention to the fact that you have not sent me the two typewriters—the Universal and Ideal. I am quite sure that I can effect sales. So if you are going to send them do so now. 'Behold, now is the accepted time; behold, now is the day of salvation.'

"Hoping that you will send them right away, I am,

"Yours very truly, JNO. T. TILLMAN."

37 And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and caused to be placed in the post-office of the United States at Owens a certain letter to be sent and delivered by said post-office establishment, addressed to J. W. Fielder and Company, at Atlanta, Georgia, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., *Nov.* 7, 1892.

"J. W. Fielder & Co., Atlanta, Ga.

"DEAR SIR-: I am desirous of buying a typewriter, the Yost. What is the price and on what terms can you let me have it? I wish to buy on the *im*stallment plan.

"Yours truly, J. W. OWENS."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said combination, conspiracy, confederacy, and agreement among themselves so had, as aforesaid, and to carry out the combination, conspiracy, confederation, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens,
38 Andrew J. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office establishment—that is to say, in the post-office of the United States at Owens, South Carolina—a certain letter to be sent and delivered by said post-office establishment, addressed to J. W. Fielder and Company, at Atlanta, Georgia, of which said letter the following is a copy:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., *Nov.* 11, 1892.

"Messrs. J. W. Fielder & Co., Atlanta, Ga.

"DEAR SIRS: I can make you safe in buying your machine. I would not want to pay more than $10.00 down and $10.00 per month. You can reserve title in machine until *payed* for.

"Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at McElrath a certain letter to be sent and delivered by said post-office establishment, addressed to J. H. Nunnally, at Atlanta, Georgia, of which said letter the following is a copy:

39 " R. J. McElrath, postmaster. N. E. McElrath, ass't postmaster.

" UNITED STATES POST-OFFICE,
" MCELRATH, S. C., 11, 11, 1892.

" Mr. J. H. Nunnally, Atlanta, Georgia.

" DEAR SIR: I would like to have your Universal if you will sell it on easy terms. I would pay you one-fourth down and the other payments $10.00 each month.

" Resp'ly yours, R. J. McELRATH."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, William M. Hatcher, John D. O'Bryant, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Owens a certain letter to be sent and delivered by said post-office establishment, addressed to Gilreath and Patton, at Greenville, of which said letter the following is a copy:

" M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

" UNITED STATES POST-OFFICE,
" OWENS, S. C., 11, 11, 1892.

Messrs. Gilreath & Patton, Greenville, S. C.

40 " GENTLEMEN: You can refer to R. C. Wyatt, Wyatts, S. C.; E. B. Lowe, Spartanburg, S. C., as the other reference- have forgotten me.

" Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oath aforesaid do further present in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederation, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and caused to be placed in the post-office of the United States at Wyatts a certain letter to be sent and delivered by said post-office establishment, addressed to Gilreath and Patton, at Greenville, South Carolina, of which said letter the following is a copy:

"Office of R. C. Wyatt, dealer in fertilizer-.

"WYATTS, S. C., *Nov.* 26, 1892.

"Gilreath & Patton, Greenville, S. C.

"SIRS: I am just in receipt of you- letter inquiring of J. W. Owens' financial responsibility. According to my judgment Mr. Owens is responsible for his contracts.

"Yours truly, R. C. WYATT."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry — the combination, conspiracy, con-
41 federacy, and agreement for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Spartanburg, South Carolina, a certain letter to be sent and delivered by said post-office establishment, addressed to W. W. Trump, Columbia, South Carolina, of which said letter the following is a copy:

"SPARTANBURG, SOUTH CAROLINA, *Dec.* 5, 1892.

"Mr. N. W. Trump, Columbia, S. C.

"DEAR SIR: Enclosed you will find an order for a Mathusket piano, style (P), as per cut enclosed; price, $425.00. While this sale is to a colored man, he is none the less good, and has been very hard to sell. He is considered as good for his debts as any man in the county. He has been for a number of years working in the leading hotels here as porter, and has accumulated nice property. Besides other property, he owns a good farm near by, and I understand that he does not owe a dollar. He stands well here and commands the respect of all who know him. He is anxious for the piano to come forward at once, as it is a present to his wife. I have two or three good sales in view, which I hope to close up very soon. If you have anything special to offer for the holidays let me know what it is.

"Yours truly, JNO. T. TILLMAN."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederation, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy,
42 confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M.

Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post — of the United States at McElrath a certain letter to be sent and delivered by said post-office establishment, addressed to J. H. Nunnally, at Atlanta, Georgia, of which said letter the following is a copy :

" R. J. McElrath, postmaster. N. E. McElrath, ass't postmaster.

" UNITED STATES POST-OFFICE,
" MCELRATH, S. C., *Dec.* 5, 1892.

" Mr. J. H. Nunnally, Atlanta, Ga.

" DEAR SIR : Replying to yours of some time ago, will say that I will take Universal typewriter on the terms mentioned in your letter, 25.00 down and 12½ dollars each mo. after.

" Please express it to Campobello.

" Resp'ly yours, R. J. McELRATH."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederation, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson,
43 John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Spartanburg a certain letter to be sent and delivered to N. W. Trump, at Columbia, South Carolina, of which said letter the following is a copy :

" John T. Tillman, general merchandise and commission broker,
No. 8 Kennedy place.

" P. O. box 143.

" SPARTANBURG, SOUTH CAROLINA, *Dec.* 8, 1892.

" Mr. N. W. Trump, Columbia, S. C.

" DEAR SIR : You will find enclosed an order for a piano to be styled and finished as described in contract. Mr. Wyatt is a young man with wife and one child. He is a good farmer ; is P. M. and agent for the sale of fertilizers and is quite a stir-ing young man. I have been in the effort to sell him for more than a month and consider it a very good sale. The terms offered *is* the best that I could get him to, and, while they are a little more extended than those mentioned in your printed matter, hope you can fill the order. Please let me know if you want me, after the fifteen days are out, to have them pay over the first payment to me or send it in to you.

" Yours truly, JNO. T. TILLMAN."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves, so had, as aforesaid, and in order to effect this scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederation, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M.
44 Thompson, John D. O'Bryant, William M. Hatcher, and John R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Owens a certain letter to be sent and delivered by said post-office establishment, addressed to James G. Tinsley and Company, at Richmond, Virginia, of which said letter the following is a copy:

"W. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., *Dec.* 12, 1892.

"Mes. James G. Tinsley & Co., Richmond, Va.

"DEAR SIRS: I would like to know the prices of your standard fertilizers. I am going to sell the coming season at Inman and Greers, South Carolina, and would like handle some of your brands—that is, provided we can trade. I will furnish you reference when you desire.

"Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Spartanburg a certain letter to be sent and delivered by said post-office establishment, addressed to E. M. Andrews, at Charlotte, North Carolina, of which said letter the following is a copy:

45 "SPARTANBURG, SOUTH CAROLINA, *Dec.* 15, 1892.

"Mr. E. M. Andrews, Charlotte, N. C.

"DEAR SIR: I have succeeded in getting a purchaser for a piano. While he wants the instrument at once, he is not willing to sign any contract until after he has seen the piano and tried it, and then if this is satisfactory will make the first payment and sign contract for the deferred payments. He wants a Mason & Hamlin

grand upright, about style (16), either in mahogany, oak, or walnut, for which he is willing to pay $30 cash and balance within two years, in such payments as you may dictate. In reference to his standing will say that I have known him well and he is a solid man and owns a good farm, plenty of stock, is postmaster where he lives, and says that he does not owe a dollar. I have been working on him for some time and never got his consent to let me send his order till today. His address is R. J. McElrath, of this Co., McElrath being his P. O., this place being named for him. Spartanburg being the shipping point, he wishes the piano shipped here. I am confident that there will be no trouble whatever, and that after the few days' test trial is out that I will get him to make the first payment and sign up the contract and send it to you, or, if at the time you make any great inducement, he might pay the cash for the whole. Trusting that there will be no delay and that you will ship at once, I am

"Yours very truly, JNO. T. TILLMAN."

"You pay freight each way should piano not give satisfaction."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves
46 so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the U. S. at Spartanburg a certain letter to be sent & delivered by said post-office establishment, addressed to E. M. Andrews, at Charlotte, North Carolina, of which said letter — is a copy:

"SPARTANBURG, SOUTH CAROLINA, *Dec.* 16, 1892.

"Mr. E. M. Andrews, Charlotte, N. C.

"DEAR SIR: Your favor of this date to hand and noted. Mr. McElrath says, as he is in a hurry for the piano, that you may send him the style 10, for which he agrees to pay as specified in contract herein enclosed. Of course, it is understood that the style of make referred to is Mason & Hamlin upright grand, so you will please let it come right on from Charlotte.

"Yours very truly, JOHN T. TILLMAN."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew

J. Fisher, John S. Fisher, John T. Tillman, Robert J. McEl-
47 rath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and caused to be placed in the post-office of the United States at Owens a certain letter and statement therewith, posted at said post-office, to be sent and delivered by said post-office establishment, addressed to James G. Tinsley and Company, at Richmond, of which said letter and statement the following are copies:

"M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

"UNITED STATES POST-OFFICE,
"OWENS, S. C., *Dec.* 19, 1892.

"Messrs. Jas. G. Tinsley & Co., Richmond, Va.

"DEAR SIR: Replying to yours of the 14th, will say that, as you requested, I have filled out the blank that you sent, and any further information that you desire I will be glad to furnish you with. I will ask that you send me analysis of your fertilizers.

"Very resp'ly yours, J. W. OWENS."

Statement Made to James G. Tinsley & Co. "as a Basis of Credit."

"Post-office: Owens.
"Shipping point: Inman.
"County: Spartanburg.
"State: S. C.
"Date: Dec. 19, 1892.
"Have you ever failed in business? If so, how did you settle? No.
"Value of your personal property: $3,000.00.
"Value of your real estate: $12,000.00.
48 "Do you insure your property, and for how much? No.
"Amount of mortgage on your real estate: None.
"Amount of chattel mortgages: None.
"How much do you owe relation- and personal friends? None.
"Do you endorse, and to what extent? No.
"Total amount of your liabilities: None.
"Total resources or net worth as a basis over and above your homestead and all: $18,000 or $20,000.
"The above is a true and correct statement of my liabilities and resources.

"(Please sign here) J. W. OWENS,
"*Owens, S. C.*

"(Remarks:)

"As requested, I have filled out blanks and will furnish reference when you wish."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said combination, conspiracy, confederacy, and agreement among themselves

so had, as aforesaid, and to carry out the combination, conspiracy confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter — place and caused to be placed in the post-office of the United States at Owens, S. C., a certain letter to be sent and delivered by said post-office establishment to Jas. G. Tinsley & Co., at Richmond, Virginia, of which said letter the following is a copy:

M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

49 " UNITED STATES POST-OFFICE,
" OWENS, S. C., *Dec.* 26, 1892.

" Messrs. Jas. G. Tinsley & Co., Richmond, Va.

" GENTLEMEN: Enclosed you will find contract, the selling of three brands of your fertilizer. I have never handled any of your goods before, and I hope they will give entire satisfaction. I would like to have the advertisement of the brands that I will sell, as it will add something to the increase of sales.

" Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatchera, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Owens a certain letter to be sent and delivered by said post-office establishment, addressed to Mess. C. Irvine Walker and Company, at Charleston, South Carolina, of which said letter the following is a copy:

" M. J. Owens, postmaster. J. W. Owens, ass't postmaster.

" UNITED STATES POST-OFFICE,
" OWENS, S. C., *Jan'y* 5, 1893.

50 " Mess. C. Irvine Walker, Jr., & Co., Charleston, S. C.

" GENTLEMEN: Replying to your letter, will say that you can mark the machine to Inman and I will get it. I have been looking for it for some time, but thought that you were behind with orders, &c.

" Resp'ly yours, J. W. OWENS."

And the jurors aforesaid upon their oaths aforesaid do further present that in further pursuance of and according to the said con-

spiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P.Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Spartanburg a certain letter to be sent and delivered by said post-office establishment, addressed to E. M. Andrews at Charlotte, North Carolina, of which said letter the following is a copy:

"SPARTANBURG, SOUTH CAROLINA, *Jan'y* 6, 1893.

"Mr. E. M. Andrews, Charlotte, N. C.

"DEAR SIR: I have succeeded finally in making the sale for the piano, and will ask you to please ship to M. J. Cantrell, Spartanburg, S. C., the style (S) Mathushek, which you say you have on hand there, and I think that it will prove the thing that he
51 wants; make the contract for the year plan, first payment being $25. I will ask you to fill out the paper, as I am out of blanks, and I will get him to sign it as soon as you send it to me. I have had to put in some good work to make this sale. Please send me some blank contracts, and oblige,

"Yours truly, JNO. T. TILLMAN.

P. S.—McElrath will be in town and fix up papers, &c.

J. T. T.

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederation, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Owens, S. C., a certain letter to be sent and delivered by said post-office establishment, addressed to J. W. Fielder & Co., at Atlanta, Georgia, of which said letter the following is a copy:

"OWENS, S. C., 2, 6, '93.

"Messrs. J. W. Fielder & Co., Atlanta, Ga.

"GENTLEMEN: Please send cut and prices of your machines. Do you sell on *on* the installment plan? I will furnish reference
52 if necessary.

"Resp'ly yours, W. M. HATCHER."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederation, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Owens, S. C., a certain letter to be sent and delivered by said post-office establishment, addressed to A. B. Farquhar & Co., at York, Pennsylvania, of which said letter the following is a copy:

"OWENS, S. C., *Feb'y 27th*, 1893.

"Messrs. A. B. Farquhar & Co., Lim'd, York, Pa.

"DEAR SIR-: What is the best that will buy an eight H. P. engine, on wheels, $75 down and the other in three and six months afterwards?

"You can refer to the P. M. of this place for anything you wish to know about me.

"Very truly yours, W. M. HATCHER."

And the jurors aforesaid, upon their oaths aforesaid, do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among
53 themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Spartanburg, S. C., a certain letter to be sent and delivered by said post-office establishment, addressed to J. W. Fielder and Company, Atlanta, Georgia, of which said letter the following is a copy:

"SPARTANBURG, SOUTH CAROLINA, *March* 1, 1893.

"J. W. Fielder & Co., Atlanta, Ga.

"GENTLEMEN: I am glad to inform you that this finds me at my post again with m*t* war paint on and ready to do mighty battle in the defence of the Yost. I have this day formed a new copartnership with Col. Gantt, a gentleman to whom you sold a machine at this place. He is going to advertise it to the fullest extent of his ability in his paper, Piedmont Head Light, which paper is sure to have the largest circulation of any in the State. As you are aware, I have only been sowing the seed of the Yost, and I am quite sure a rich harvest is in the near future for us. The little balance due you by

me will be adjusted in a very short period. Had it not been for my misfortune, *that* the nature of which you are well informed, the difference would never have existed. I suppose that it will — gratifying to you to know that I will have several other sources from this on from which I will be enabled to draw. We are going to handle several other lines of goods besides the Yost, all of which will be thoroughly advertised in the above-named paper, as well as
54 in the dodgers and other printing matter which will be distributed here and throughout the surrounding country. Col. Gantt and myself will have our office together, which we think the best plan to expedite the business we have undertaken.

"Hoping that this explanation will be so satisfactory as to meet your hearty approval, and that you will let me hear from you by return mail, I am,

"Yours very truly, JOHN T. TILLMAN."

Dictated to N.

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John T. Tillman, John S. Fisher, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, William M. Hatcher, John D. O'Bryant, and James R. Burdine thereafter did place and caused to be placed in the post-office of the United States at Spartanburg a certain letter to be sent and delivered by said post-office establishment, addressed to Luden and Bates, at Savannah, of which said letter the following is a copy:

"SPARTANBURG, S. C., *June* 30, 1883.

"Luden & Bates, Savannah, Ga.

"SIRS: I have filled an order for a piano. I have not got any one to sign with me. You will find my commercial rating laid down in 'Bradstreet's' or 'Dun's' reports at Wyatt, S. C. Why I got my mail at Spartanburg the P. O. at this place has just been discontinued.

"Hoping to receive the instrument soon, I remain,

"Yours truly, CLARENCE LEE."

55 And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M.

Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Spartanburg a certain postal card to be sent and delivered by said post-office establishment, addressed to Ganzalies, Withers & Co., at Columbia, of which postal card the following is a copy:

"SPARTANBURG, S. C., *June* 30, 1893.

"Gonzalies, Wither & Co.

"SIRS: I wish to buy one of your bicycles on 30 days' time. I refer you to 'Dun's' or 'Bradstreet's' commercial reports for my credit. Please refer to Wyatt, S. C., as this office has been discontinued and I have to get my mail at Spartanburg.

"Yours truly, CLARENCE LEE."

And the jurors aforesaid upon their oath aforesaid do further present that in further pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Ed-
56 ward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine thereafter did place and cause to be placed in the post-office of the United States at Wyatt a certain letter to be sent and delivered by said post-office establishment, addressed to The Stokes Mfg. Co., at Chicago, of which said letter the following is a copy:

"WYATT, S. C., *June* 11, 1893.

"The Stokes Mfg. Co., Chicago, Ill.

"SIRS: Please ship by express to Spartanburg, S. C., one 'Sterling Model B' bicycle on 30 day's time. Please send a lantern and all sundries belonging to the wheels. Address me at Spartanburg, S. C., as I will be there for several days.

"Let me hear from — on return mail.

"Yours truly, CLARENCE LEE.

"P. S.—I think that I can sell several bicycles for you after I get this one for a sample."

Contrary to the acts of Congress in such cases made and provided and against the peace and dignity of the United States.

2nd count.

And the jurors aforesaid upon their oath aforesaid do further present that Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine, together with divers other evil disposed persons to the jurors aforesaid unknown, late of the district aforesaid, on the first day of

July, in the year of our Lord one thousand eight hundred and ninety-two, at Spartanburg, in the State of South Carolina aforesaid,
57 in the district aforesaid and within the jurisdiction of this court, being persons of evil mind and disposition, wickedly devising and intending to com-it the offense against the United States hereinafter set forth, fraudulently, maliciously, and unlawfully did combine, conspire, confederate, and agree together between and among themselves to com-it against the United States this offense—that is to say, that the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine should devise a scheme and artifice to defraud Cornish and Company, the Smith Premier Typewriter Company, the Trobridge Piano Company, the Knabe Piano Company, the Whitman Saddle Company, A. H. Andrews and Company, C. Irvine Walker, Jr., & Co., E. M. Andrews, J. W. Fuller & Co., A. B. Farquhar & Co., J. W. Fielder & Co., Stokes Manufacturing Company, Ludden & Bates, Gonzalies & Withers, Mosler, Bohman & Co., J. H. Nunnally, Gates Desk Company, Thomas & Barton, Work Brothers and Company, Taylor Brothers and Company, Gilreath and Patton, N. W. Trump, and James G. Tinsley and Company and divers other persons to the jurors aforesaid unknown, to be effected by opening correspondence with them and each of them respectfully by means of the post-office establishment of the United States and by inciting them and each of them to open correspondence with them, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine, by means of said post-office establishment, which scheme and artifice was the obtaining from the said Cornish and Company, the Smith Premier Typewriter Company, the Trowbridge Piano Company, the Knabe Piano Company, the Whitman Saddle Company, A. H. Andrews and Company, C. Irvine Walker, Jr., and Company, E. M. Andrews, J. W. Fuller and Company, A. B. Farquhar and Company, J. W. Fielder and Com
pany, Stokes Manufacturing Company, Ludden and Bates,
58 Gonzalies and Withers, Mosler Boham & Company, J. H. Nunnally, Gates Desk Company, Thomas & Barton, Work Brothers & Company, Taylor Brothers & Company, Gilreath and Patton, N. W. Trump, and James G. Tinsley and Company, and said divers other persons, as vendors thereof, with intent to defraud them, the said vendors, of payment therefor and of their property therein and to cheat and defraud them of the same; and, having devised such scheme and artifice aforesaid to be effected by means of the post-office establishment as aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine should place

and cause to be placed certain letters in certain post-offices of the United States, to be sent and delivered by said post-office establishment.

And the jurors aforesaid upon their oaths aforesaid do further present that in pursuance of and according to the said conspiracy, combination, confederacy, and agreement among themselves so had, as aforesaid, and in order to effect the scheme and artifice aforesaid, and to carry out the combination, conspiracy, confederacy, and agreement aforesaid for the purpose aforesaid, the said Charles P. Barrett, Thomas J. Hannon, J. Wesley Owens, Andrew J. Fisher, John S. Fisher, John T. Tillman, Robert J. McElrath, Edward B. Lowe, Robert C. Wyatt, Clarence Lee, John M. Thompson, John D. O'Bryant, William M. Hatcher, and James R. Burdine afterwards did place and cause to be placed in the post-office of the United States certain letters to be sent and delivered by said post-office establishment, addressed to Cornish and Company, the Smith Premier Typewriter Company, the Trowbridge Piano Company, the Knabe Piano Company, the Whitman Saddle Company, A. H. Andrews and Company, C. Irvine Walker, Jr., and Company, E. M. Andrews, J. W. Fuller and Company, A. B. Farquhar and
59 Company, J. W. Fielder and Company, Stokes Manufacturing Company, Ludden and Bates, Gonzalies and Withers, Mosler Boham and Company, J. H. Nunnally, Gates Desk Company, Thomas and Barton, Work Brothers and Company, Taylor Brothers and Company, Gilreath and Patton, N. W. Trump, and James G. Tinsley and Company, and divers other persons to the jurors aforesaid unknown, contrary to the act of Congress in such cases made and provided and against the peace and dignity of the United States.

WILLIAM PERRY MURPHY,
United States Attorney.

60 *Return of Grand Jury.*

The grand jury returned true bill.

JEREMIAH SMITH, *Foreman.*

December 3rd, 1894.

Nolle prosequi as to Edward B. Lowe.

WM. PERRY MURPHY,
U. S. Attorney.

We appear in person and plead guilty.

T. J. HANNON.
R. J. McELRATH.
his
CLARENCE x LEE.
mark.

In presence of—
J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Filed 3rd December, 1894.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

61 (*Trial of Cause.*)

THE UNITED STATES *vs.* CHARLES P. BARRETT, THOMAS J. HANNON, A. J. Fisher, R. J. McElrath, Clarence Lee, James R. Burdine, J. W. Owens, John C. O'Bryant, William R. Hatcher, R. C. Wyatt, John M. Thompson, John S. Fisher, John T. Tillman.	Indictment for Violation Section 5440 & 5480, R.S. U.S. Conspiracy.

This case came up for trial on this December 6th, 1894. The defendants being called, the following-named defendants entered their plea of "guilty" to this indictment, to wit: Thomas J. Hannon, Robert J. McElrath, and Clarence Lee.

The following-named defendants, being called, entered their plea of "not guilty," to wit: Charles P. Barrett, John S. Fisher, James R. Burdine, A. J. Fisher, and John D. O'Bryant.

The following-named defendants being called and not answering, to wit: R. C. Wyatt, John M. Thompson, J. W. Owens, John T. Tillman.

After various chal-enges by the United States and the defendant the following jury was selected, organized, and sworn, to wit: George B. Anderson, foreman; G. R. Stork, J. R. Donald, Charles S. Pack, J. A. Lavell, Henry Calahan, A. A. Peterkin, T. H. Culp, Peter Gaillard, L. C. Collins, Randolph Sams, and Thomas Briar. The following witnesses were sworn and examined on behalf of the United States, to wit: J. W. Biggs, R. J. McElrath, Gabriel Rouquie, Frank W. Stratton, G. B. Dean, T. J. Harmon, Ralph K. Carson, John E. Barton, A. B. Calvert, Clarence Lee, Jefferson Cantrell, J. E. Barton, recalled; Miss Rena L. Bouchelle, Thomas Swoger,
62 David T. Robb, Frederick Nacher, Jr., Gustav Bartell, F. J. Gates, William C. C. Mehlbrack, C. Irvine Walker, Jr., George T. Sargent, R. K. Carson, recalled; J. W. Fielder, H. E. Pery, W. A. Maigne, N. W. Trump, Ephraim Adams, F. J. Tanner, Henry W. Beadle, J. J. Johnson, John D. Murphy, J. H. Nunnally, A. C. Newman, Jefferson Wallace, J. T. Anderson, T. W. Kellar, W. O. Marstrand, J. J. Gentry, W. O. Gentry, W. T. Walters, M. A. Malone, T. R. Trimmier, W. T. Liddell, H. T. Wyatt, W. L. Tinsley, J. E. Bomar, S. T. Poinier, James A. Brock, H. T. Wyatt, John D. Kirby. The following witnesses were sworn and examined on behalf of defendants, to wit:

C. P. Barrett, A. J. Fisher, John S. Fisher.

Arguments were made by Mr. E. O. Woods and by W. Perry Murphy, U. S. attorneys, on behalf of the United States, and by Absalom Blythe, on behalf of the defendants Charles P. Barrett, A. J. Fisher, and John S. Fisher. After hearing arguments the court charged the jury, and they retired to *into* their room, and after considering the case returned into the court with the following verdict:

"Guilty" as to Charles P. Barrett, John T. Tillman, and J. Wesley Owens, and "not guilty" as to John D. O'Bryant, William M. Hatcher, James R. Burdine, A. J. Fisher, and John S. Fisher.

11th December, 1894.

GEORGE B. ANDERSON, *Foreman.*

After publication of the verdict the defendants' attorney, Absalom Blythe, gave notice of motion for a new trial for Charles P. Barrett.

Sentence.

Let the defendant Charles P. Barrett be imprisoned in the penetentiary at Columbus, Ohio, for eighteen months, and pay a fine of twenty-five hundred dollars.

WILLIAM H. BRAWLEY,
U. S. Judge.

12th December, 1894.

63 *Order Extending Time in which to File Bill of Exceptions.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court.

THE UNITED STATES *vs.* CHARLES P. BARRETT & JOHN T. TILLMAN and Others, Defendants.	Indictment for Violation Section 5480, U. S. Statutes, Conspiring, &c.

The motion to quash the indictment and the — of grand and petit jurors and in arrest of judgment in the above-stated cause having been overruled by the court—

On motion of Mr. Blythe, attorney for the defendants above named, C. P. Barrett & J. T. Tillman, it is ordered by the court—

That the said defendants, Charles P. Barrett and John T. Tillman, and their attorneys have thirty days from the date of this order in which to make up and file a bill of exceptions in this behalf.

WM. H. BRAWLEY,
U. S. Judge.

12th Dec., 1894.

Filed Jan. 12, 1895.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

64 *Order for Bail.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court.

THE UNITED STATES
vs.
CHARLES P. BARRETT *et al.*
Section 5440, U. S. Rev. Stat.

Order for bail.

A writ of error having been granted herein to defendant Charles P. Barrett to the Supreme Court of the United States, and citation having been duly served upon the attorney of the United States for the district of South Carolina, now, on motion of A. Blythe, attorney for the said defendant, Charles P. Barrett—

Ordered that said defendant be released pending the cause in the said Supreme Court upon his entering into a recognizance, with two (2) or more sufficient sureties, in the sum of ($3,000.00) three thousand dollars, the said recognizance to be entered into before the clerk of the circuit court for the district of South Carolina and to be approved by him.

WM. H. BRAWLEY,
U. S. Judge.

7th Jan'y, 1895.

Filed Jan. 7, 1895.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

65 DEFENDANTS' BILL OF EXCEPTIONS.

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court.

THE UNITED STATES
vs.
CHARLES P. BARRETT *et al.*
Section 5440, U. S. Rev. Stat.

DEFENDANTS' BILL OF EXCEPTIONS.

First.

1. Be it remembered that on the call of this case for trial and before plea the defendant Charles P. Barrett challenged the array of both the grand and petit jurors upon the ground that they were drawn from both the eastern and western districts of South Carolina, when the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, in the western dis-

trict of said State. The court overruled these objections; to which rulings the said defendant, by counsel, excepted and offered this his first bill of exceptions and prayed that it be signed, sealed, and made a part of the record, which is accordingly done.

WM. H. BRAWLEY, [L. S.]
U. S. Judge.

Second.

2. Be it remembered that on the call of the case for trial and before plea the said defendant demurred to the indictment upon the ground that, although the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, in the State of South Carolina, the same b-ing in the western district of said State, the indictment was found in the city of Columbia, in the county of Richland, in the eastern district of said State, at a time, namely, on the — day of November, 1894, not authorized by law for the sitting of any court of the United States for the western district of South Carolina. The court overruled these objections; to which ruling the said defendant, by counsel, excepted and offered this his second bill of exceptions and prayed that it be signed, sealed, and made a part of the record, which is accordingly done.

66

WM. H. BRAWLEY, [L. S.]
U. S. Judge.

Third.

3. Be it remembered that on the call of this case for trial the said defendant filed a plea to the jurisdiction of the court upon the ground that, although the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, the same being in the western district of South Carolina, the trial was sought to be held in the city of Columbia, in the county of Richland, in the eastern district of said State. The court overruled this objection; to which ruling the said defendant, by counsel, excepted and offered this his third bill of exceptions and prayed that it be signed, sealed, and made a part of the record, which is accordingly done.

—— ——. [L. S.]

Fourth.

Be it remembered that after the attorney of the United States had closed his case the said defendant moved the court that, since testimony had disclosed the fact that at least four conspiracies, if any at all, had been proven, in some of which defendant Charles P. Barrett was not implicated, and in others he was implicated with certain of the other defendants, while in still others he was implicated with certain of the defendants at one time and place and with different defendants at another time and place, the attorney of the United States be required to elect on which one of the alleged conspiracies he would ask for a conviction. This motion was overruled by the court; to which ruling the said defendant, by counsel, excepted and offered this his fourth bill of ex-

67

ceptions and prayed that it be signed, sealed, and made a part of the record; which is accordingly done.

WM. H. BRAWLEY, [L. S.]
U. S. Judge.

Fifth.

5. Be it remembered that after verdict and before judgment the said defendant moved the court in arrest of judgment upon the grounds following, to wit: (1) Because the grand jurors that found the indictment and the petit jurors that found the verdict were drawn from both the eastern & western districts of South Carolina, when the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, in the western district of said State; (2) because, although the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, in the State of South Carolina, the same being in the western district of said State, the indictment was found in the city of Columbia, in the county of Richland, in the eastern district of said State, at a time, namely, on the — day of November, 1894, not authorized by law for the sitting of any court of the United States for the western district of South Carolina; (3) because, although the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, the same being in the western district of South Carolina, the trial was had in the city of Columbia, in the county of Richland, in the eastern district of said State.

68 This motion in arrest of judgment was refused by the court; to which ruling the said defendant, by counsel, excepted and offered this his fifth bill of exceptions and prayed that it be signed, sealed, and made a part of the record, which is accordingly done.

WM. H. BRAWLEY, [L. S.]
U. S. Judge.

Filed Jan. 7, 1895.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

68½ *Assignment of Errors.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court.

THE UNITED STATES } Conspiracy to Violate Section 5480, Revised
vs. } Statutes of United States, *i. e.*, 5440, U. S.
CHAS. P. BARRETT *et al.* } Rev. Stat.

Defendant Barrett's Assignment of Errors.

The defendant Charles P. Barrett, by counsel, respectfully assigns the following errors to the judgment rendered in this cause on December 12, 1894, and to the rulings of the presiding judge before, during, and after the trial.

First.

That the court erred in overruling the defendant's challenges to the array of both the grand and petit jurors, the alleged offence being charged in the indictment to have been committed in the county of Spartanburg, in the western district of South Carolina, and the panels of both the grand & petit jurors being drawn from both the eastern and western district- of said State.

Second.

That the court erred in overruling the demurrer of the said defendant to the indictment, the alleged offence being charged in the indictment to have been committed in the county of Spartanburg, in the State of South Carolina, the same being in the western district of said State, and the *and the* indictment being formed in the city of Columbia, in the county of Richland, in the eastern district of said State, and at a time, namely, on the — day of November, 1894, not authorized by law for the sitting of any court of the United States for the western district of South Carolina.

69 Third.

That the court erred in overruling the defendant's plea to the jurisdiction of the court, the alleged offense being charged in the indictment to have been committed in the county of Spartanburg, in the western district of South Carolina, and the trial was had in the city of Columbia, in the county of Richland, in the eastern district of said State.

Fourth.

That the court erred in not requiring the United States attorney, at the close of the testimony, to elect on which one of the alleged conspiracies he would rely for a conviction, the evidence showing that several conspiracies, if any at all, had been committed, in some of which the defendant Barrett was not implicated, while in others he was implicated with some of the defendants at one time and place in one conspiracy and with certain of the other defendants at another time and place in another separate and distinct conspiracy.

Fifth.

That the court erred in not arresting the judgment, the grand and petit jurors being drawn from both the eastern & western districts of South Carolina instead of the western district alone, the indictment being found in the city of Columbia, in the county of Richland, in the eastern district of So. Ca., although the alleged offense is charged in the said indictment to have been committed in the county of Spartanburg, in the western district of said State, the trial itself having taken place, not in the western district of South Carolina, the place of the alleged commission of the offense, but in the city of Columbia, in the county of Richland, in the eastern district of said State, and at a time not authorized by law for

any court of the United States to sit in the western district of said State.

CHAS. P. BARRETT.

Filed May 22nd, 1895.

70 *Application for Writ of Error and Supersedeas.*

THE UNITED STATES OF AMERICA, *District of South Carolina.*

In the Circuit Court.

THE UNITED STATES *vs.* CHAS. P. BARRETT *et al.* } Section 5410, U. S. Rev. Stat. Conspiracy.

To the honorable justice of the Supreme Court of the United States:

The petition of Chas. P. Barrett respectfully shows:

I. That at a sesssion of the circuit — of the United States for South Carolina, which convened on November 26, 1894, and adjourned on February 2nd, 1895, he was convicted of conspiracy to violate section fifty-four hundred and eighty of the Revised Statutes of the United States, and on December 12th, 1894, was sentenced therefor to eighteen (18) months' imprisonment in the penitentiary.

II. That this petition and the assignment of errors has been duly filed in the office of the clerk of the circuit court for South Carolina, which will appear by reference to the certificate of the said clerk hereunto annexed.

Wherefore, for the errors apparent in the rendition of said judgment and in the rulings of the court, the defendant Chas. P. Barrett prays that a writ of error and supersedeas to said judgment may be allowed, and that a transcript of the record and proceed-
71 ings and papers in the case may be sent to the Supreme Court of the United States.

CHAS. P. BARRETT,
By OBEAR & DOUGLASS, *Attorneys.*

Filed June 4, 1895.

72 *Order Allowing Writ of Error and Supersedeas.*

It is ordered that the writ of error and supersedeas be allowed as prayed for.

This 28th day of May, 1895.

CHARLES H. SIMONTON,
Circuit Judge.

Filed June 4, 1895.

73 THE UNITED STATES OF AMERICA, *District of South Carolina.*

In the Circuit Court.

THE UNITED STATES *v.* CHAS. P. BARRETT *et als.* } Section 5440, U. S. Rev. Stat.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the circuit court of the United States for the district of South Carolina, Greeting:

Because in the record and proceedings, as well as in the rendition of a judgment of a plea which is in the said circuit court, before you or some of you, between The United States, plaintiff, and Chas. P. Barrett *et al.*, defendants, a manifest error hath happened, to the great damage of the defendant Chas. P. Barrett, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send
74 the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the same at Washington, D. C., on the — day of ——, 1895, in the said Supreme Court, that said court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of our Supreme Court aforesaid, at Washington aforesaid, the 11 day of July, in the year of our Lord one thousand eight hundred and ninety-five.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
Clerk of the Circuit Court of the United States for the District of South Carolina.

Allowed by—
WM. H. BRAWLEY, *U. S. Judge.*

July 11th, 1895.

75 [Endorsed:] United States of America, district of South Carolina. In circuit court. The United States *vs.* Chas. P. Barrett *et als.* Writ of error. Filed May 4, 1895. J. E. Hagood, C. C. C. U. S., dist. S. C.

H. J. Hickson, deputy U. S. marshal, being duly sworn, says that he served Wm. Perry Murphy, U. S. district att'y, personally by

showing him the within "writ of error" on the 7th day June, 1895, in the city of Charleston, S. C.

H. J. HICKSON,
Deputy U. S. M.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

76 *Order Extending Time in which to File Record.*

UNITED STATES OF AMERICA:

In the Supreme Court.

THE UNITED STATES, Defendant in Error,
vs.
CHARLES P. BARRETT *et al.*, Plaintiff- in Error. } Section 5440, U. S. R. S.

On motion of Charles P. Barrett, the above-named plaintiff in error—

It is ordered that the said Charles P. Barrett be allowed sixty days, in addition to the time now allowed him by law, within which to file the record in his above-stated writ of error in the office of the clerk of the Supreme Court *Court* of the United States.

This 6 day of June, 1895.

CHARLES H. SIMONTON,
Circuit Judge, 4th Circuit.

I, J. E. Hagood, clerk of the said court, do hereby certify that the foregoing order is a true copy of the original order which was sent by me to the clerk of the Supreme Court to be filed.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

77 THE UNITED STATES OF AMERICA, *District of South Carolina.*

In Circuit Court.

THE UNITED STATES
v.
CHAS. P. BARRETT *et al.*, } § 5440, U. S. Rev. Stat. Conspiracy.

Citation on Writ of Error.

The President of the United States to the United States, Greeting:

You are hereby cited and admonished to be and appear at a United States Supreme Court, to be holden at Washington, D. C., on the 29 day of June, 1895, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of South Carolina, wherein Chas. P. Barrett is plaintiff in error and you are defendant in error, to show cause, if any there be, why the

judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy
78 justice should not be done to the parties in that behalf.

Witness the Honorable M. W. Fuller, Chief Justice of the Supreme Court of the United States *for the district of South Carolina*, this 28 day of May, 1895.

CHARLES H. SIMONTON,
Circuit Judge.

[Endorsed:] The United States of America, district of South Carolina. In circuit court. The United States *v.* Chas. P. Barrett *et al.* Citation on writ of error. Original. Filed June 4, 1895. J. E. Hagood, C. C. C. U. S., dist. S. C.

H. J. Hickson, deputy U. S. marshal, being duly sworn, says that he served a copy of the within "citation on writ of error" personally upon Wm. Perry Murphy, U. S. district att'y, in the city of Charleston, S. C., on the 7th day June, 1895.

H. J. HICKSON,
Deputy U. S. M.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

79 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit.

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of the records, proceedings, and trial of the cause in the case of The United States, plaintiff, against Charles P. Barrett, defendant, rendered as aforesaid, together with all the proceedings had in the cause relating to the same.

Given under my hand and seal of said court, at clerk's office in the city of Charleston, S. C., this the 11th day of July, A. D. 1895.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: Case No. 15,986. South Carolina C. C. U. S. Term No., 53. Charles P. Barrett, plaintiff in error, *vs.* The United States. Filed August 13th, 1895.

Agreed

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 53.

CHARLES P. BARRETT, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED AUGUST 13, 1895.

In the circuit court of the United States for the district of South Carolina.

THE UNITED STATES *vs.* CHAS. P. BARRETT.	Indictment for conspiracy to violate Section 5480, U. S. Revised Statutes.

At the regular term of the circuit court of the United States for the district of South Carolina, which convened in the city of Columbia, South Carolina, on the fourth Monday in November, 1894, his honor Wm. H. Brawley presiding, Chas. P. Barrett and others were indicted, tried, and convicted. Defendant Barrett challenged the array of both the grand and petit jurors, demurred to the jurisdiction of the courts, and moved to quash the indictment, which were all overruled by the court. He filed a plea of "not guilty."

The indictment charged the offense to have been committed in the county of Spartanburg, S. C. After conviction he made a motion in arrest of judgment, which was overruled. He was then sentenced to eighteen months imprisonment and to pay a fine of $2,500. He alone of the defendants prosecutes a writ of error to the Supreme Court.

The bill of exceptions is as follows:

I.

Be it remembered that, on the call of the case for trial, and before plea, the defendant, Charles P. Barrett, challenged the array of both the grand and petit jurors, upon

the ground that they were drawn from both the eastern and western districts of South Carolina, when the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, in the western district of said State. The court overruled these objections, to which rulings the said defendant, by counsel, excepted and offered this, his first bill of exceptions, and prayed that it be signed, sealed, and made a part of the record, which is accordingly done.

WM. H. BRAWLEY, [L. S.]
U. S. Judge.

II.

Be it remembered that, on the call of the case for trial, and before plea, the said defendant demurred to the indictment upon the ground that, although the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, in the State of South Carolina, the same being in the western district of said state, the indictment was found in the city of Columbia, in the county of Richland, in the eastern district of said state, at a time, namely, on the —— day of November, 1894, not authorized by law for the sitting of any court of the United States for the western district of South Carolina. The court overruled these objections, to which ruling the said defendant, by counsel, excepted and offered this, his second bill of exceptions, and prayed that the same be signed, sealed, and made a part of the record, which is accordingly done.

WM. H. BRAWLEY, [L. S.]
U. S. Judge.

III.

Be it remembered that, on the call of this case for trial,

the said defendant filed a plea to the jurisdiction of the court upon the ground that, although the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, the same being in the western district of South Carolina, the trial was sought to be held in the city of Columbia, in the county of Richland, in the eastern district of said State. The court overruled this objection, to which ruling the said defendant excepted, and offered this, his third bill of exceptions, and prayed that it be signed, sealed, and made a part of the record, which is accordingly done.

WM. H. BRAWLEY, [L. S.]
U. S. Judge.

4. × × × ×

5. Be it remembered that, after verdict and before judgment, the said defendant move the court in arrest of judgment upon the grounds following, to wit:

1. Because the grand jurors that found the indictment and the petit jurors that found the verdict, were drawn from both the eastern and western districts of South Carolina, when the alleged offense is charged to have been committed in the county of Spartanburg, in the western district of said State.

2. Because, although the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, in the State of South Carolina, the same being in the western district of said State, the indictment was found in the city of Columbia, in the county of Richland, in the eastern district of said State, at a time, namely, on the —— day of November, 1894, not authorized by law for the sitting of any court of the United States for the western district of South Carolina.

3. Because, although the alleged offense is charged in

the indictment to have been committed in the county of Spartanburg, the same being in the western district of South Carolina, the trial was had in the city of Columbia, in the county of Richland, in the eastern district of said State.

This motion in the arrest of judgment was refused by the court, to which ruling the said defendant, by counsel, duly excepted and offered this, his fourth bill of exceptions and prayed that it be signed, sealed and made a part of the record, which is accordingly done.

WM. H. BRAWLEY, [L. S.]
U. S. Judge.

The assignments of error are as follows:

The defendant, Charles P. Barrett, respectfully assigns the following errors to the judgment rendered in this cause on December 12, 1894, and to the rulings of the presiding judge, before, during, and after the trial:

I.

That the court erred in overruling the defendant's challenges to both the grand and petit jurors, the alleged offense being charged in the indictment to have been committed in the county of Spartanburg, in the western district of South Carolina, and the panels of both the grand and petit jurors being drawn from both the eastern and western districts of said State.

II.

That the court erred in overruling the demurrer of the defendant to the indictment, the alleged offense being charged in the indictment to have been committed in the county of Spartanburg, in the State of South Carolina, the same being in the western district of said State, and

the indictment being found in the city of Columbia, in the county of Richland, in the eastern district of said State, at a time, namely, on the —— day of November, 1894, not authorized by law for the sitting of any court of the United States for the western district of South Carolina.

III.

That the court erred in overruling the defendant's plea to the jurisdiction of the court, the alleged offense being charged in the indictment to have been committed in the county of Spartanburg, in the western district of South Carolina, and the trial was had in the city of Columbia, in the county of Richland, in the eastern district of said State.

IV.

That the court erred in not requiring the United States attorney, at the close of the testimony, to elect on which one of the alleged conspiracies he would rely for a conviction, the evidence showing that several conspiracies, if any at all, had been committed, in some of which the defendant Barrett was not implicated; while in others he was implicated with some of the defendants at one time and place in one conspiracy, and with certain of the other defendants at another time and place in another and separate conspiracy.

V.

That the court erred in not arresting the judgment, the grand and petit jurors being drawn from both the eastern and western districts, instead of from the western district alone; the indictment being found in the city of Columbia, in

the county of Richland, in the eastern district of South Carolina, although the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, in the western district of said State; the trial itself having taken place, not in the western district of South Carolina, the place of the alleged commission of the offense, but in the city of Columbia, in the county of Richland, in the eastern district of said State, and at a time not authorized by law for any court of the United States to sit in the western district of said State.

CHAS. P. BARRETT.

In due time the writ of error was allowed by a circuit judge for the circuit, the citation duly served on the district attorney, and the case docketed in the Supreme Court.

We agree that the above and foregoing six pages shall constitute the record for the Supreme Court in this case. It is abbreviated for the purpose of curtailing the expense of printing as well as for the convenience of court and counsel. It is not intended to alter the record in any way and, therefore, should there be any errors of omission or commission the original record on file in the clerk's office is to control, and so much of it as the court may require is to be printed by plaintiff in error.

Chas. C. Lancaster ~~THOS. J. MACKEY,~~
Attorney for Plaintiff in Error.

JAS. E. BOYD,
Ass't Att'y General.

Dated *October 13, 1897.*

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 175.

CHARLES P. BARRETT, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

FILED MAY 11, 1898.

(16,296.)

(16,296.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No 175

CHARLES P. BARRETT, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 21, 1898.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA, *Western District of South Carolina,* } *To wit:*

United States District Court.

At a district court of the United States for the western district of South Carolina, begun and holden at Greenville, in said western district, on the 4th day of February, 1895, before the Hon. Wm. H. Brawley, U. S. district judge for the district of South Carolina, holding said court according to the form of the act of Congress in such case made and provided, the following proceedings, among others, were had in the cause entitled—

THE UNITED STATES *vs.* CHARLES P. BARRETT, W. OSCAR EVANS, Robert J. McElrath, Thomas B. Neighbors, Robert C. Wyatt, and J. Robert Burdine.	Vio. Sec. 5440, R. S. U. S. (Conspiracy to Defraud the United States).

Be it remembered that heretofore, to wit, on the 30th day of January, 1895, appeared The United States, by its attorney, Wm. Perry Murphy, in the said United States district court and filed the original record in certain proceedings had in the aforesaid cause in the circuit court of the United States for the district of South
2 Carolina, at the November term, 1894, of said circuit court, at Columbia, of certain parts of which record the following is an exemplification, to wit:

EXEMPLIFICATION OF RECORD.

Order of Removal.

Filed 30th January, 1895. E. M. Seabrook, Clerk District Court.

THE UNITED STATES OF AMERICA, *District of South Carolina.* }

In the Circuit Court.

THE UNITED STATES *vs.* CHARLES P. BARRETT, W. OSCAR EVANS, Robert J. McElrath, Thomas B. Neighbors, Robert C. Wyatt, J. Robert Burdine.	Indict. for Vio. Sec. 5440, R. S. U. S. (Conspiracy to Defraud the U. S.).

On motion of Wm. Perry Murphy, U. S. attorney for the district of South Carolina, it is hereby ordered that the above-stated case be remitted from the circuit court of the United States for the district

of South Carolina to the district court of the United States for the western district of South Carolina.

CHARLES H. SIMONTON,
U. S. Circuit Judge.

30th January, 1895.

3 *Affidavit Before U. S. Comm'r.*

Filed 30th January, 1895. E. M. Seabrook, Clerk District Court.

THE U. S. OF AMERICA, *District of South Carolina,* } *To wit:*

U. S. District Court.

Fred. D. Peer, post-office inspector, personally comes before me and on oath says th-t he is informed and verily believes that Charles P. Barrett, on or about the 14th day of August, A. D. 1893, at Spartanburg, in the county of Spartanburg, in the district aforesaid, and within the jurisdiction of this court, did violate sec. 1428, Postal Laws of the United States, by receiving and retaining in his possession, with intent to convert to his own use or gain, postage stamps, books, and other property of the United States which had been embezzled, stolen, or purloined from the United States, knowing the same to have been so embezzled, stolen, or purloined, contrary to the power, force, and effect of the statutes of the United States in such case made and provided.

FRED. D. PEER,
Post-office Inspector.

Sworn to before me, at Spartanburg, this 14th day of August, A. D. 1893.

ARCH. B. CALVERT,
U. S. Comm'r.

4 *Commissioner's Warrant.*

Filed 30th January, '95.

THE UNITED STATES OF AMERICA, *District of South Carolina.* }

OFFICE OF COM'R OF CIRCUIT & DISTRICT COURTS OF U. S. FOR SO. CA.

By Arch. B. Calvert, commissioner of the circuit and district courts of the United States for said district, to the U. S. marshal or his deputies:

Whereas complaint on oath has been made unto me by Fred. D. Peer, post-office inspector, that he is informed and verily believes that Charles P. Barrett, on or about the 14th day of August, A. D. 1893, in the county of Spartanburg, South Carolina, did violate sec. 1428, Postal Laws of the U. S., by receiving and retaining in his possession, with intent to convert to his own use or gain, stamps,

books, and other property of the U. S. which had been embezzled, stolen, or purloined from the United States, knowing the same to have been so embezzled, stolen, or purloined :

These are therefore to command you to apprehend the said Chas. P. Barrett and bring him before me, to be dealt with according to law.

Given under my hand and seal, at Spartanburg, the 14th day of August, one thousand eight hundred and ninety-three.

ARCH. B. CALVERT,
Comm'r Circuit and Dist. Courts of U. S. for So. Ca.

5 *Marshall's Return on Warrant.*

I hereby certify that on the 16th day of August, 1893, I arrested the within-named defendant, Chas. P. Barrett, near Spartanburg post-office, Spartanburg county ; that on the 8, 11, 30 day- of September, 1893, I took him before U. S. Commissioner Arch. B. Calvert, at Spartanburg, S. C., who committed him for preliminary examination; that I traveled 18 miles on the 8, 11, 30 day- of Sept., 1893, for the purpose of summoning the witnesses in said case; that I traveled 34 miles to make the arrest, and expended in endeavoring to make said arrest —.

That J. I. Miller acted as guard, and appeared each day before said commissioner, and that said guard was necessary for the safe keeping of the prisoner.

JNO. D. KIRBY,
Dep. U. S. Marshal.

Sworn to before me this 30 day of Sept., 1893.

ARCH. B. CALVERT,
U. S. Comm'r.

6 *Recog. of Def't for Trial.*

Filed 30th January, '95.

UNITED STATES OF AMERICA, }
South Carolina District. }

Be it remembered that on the 23d day of October, in the year of our Lord one thousand eight hundred and ninety-three, personally appeared before me Charles P. Barrett, who acknowledge- himself to be and indebted to the United States of America in the sum of fifteen hundred ($1,500) dollars, to be levied of *their* several lands and tenements, goods and chattels, respectively, to and for the use of the said United States of America if the above-mentioned Charles P. Barrett shall fail in performing the condition underwritten.

The condition of this recognizance is such that if the said Charles P. Barrett shall personally appear before the district judge of the United States of America at the next district court of the said United States of America for the district of South Carolina, to be holden at the usual place of judicature, in Greenville, So. Ca., on

the 3d Monday in January, 1894, next, then and there to answer the charge of violating sec. 1428, Postal Laws of U. S., and to do and receive what shall be enjoined by the court, and not to depart the court without license, then this recognizance to be void or else to remain in full force and virtue.

CHAS. P. BARRETT. [SEAL.]

Taken and acknowledged the day and year above written before me—

ARCH. B. CALVERT,
U. S. Comm'r.

7 *Indictment, with Finding of Grand Jury.*

Filed 30th January, '95. E. M. Seabrook, clerk dist. court.

THE UNITED STATES OF AMERICA, *Dist. of South Carolina,* } *To wit:*

In the District Court.

At a stated term of the circuit court of the United States for the district of South Carolina, begun and holden at Columbia, within and for the district aforesaid, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and ninety-four, the jurors of the United States of America within and for the district aforesaid—that is to say, upon their oaths respectively do present that Charles P. Barrett, W. Oscar Evins, Robert J. McElrath, Thomas B. Neighbors, Robert C. Wyatt, and J. Robert Burdine, late of the district aforesaid, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and ninety-two, at Spartanburg county, in the State of South Carolina, in said district, and within the jurisdiction of this court, being persons of evil minds and dispositions, wickedly devising and intending to defraud the United States, fraudulently, maliciously, and unlawfully did combine, conspire, confederate, and agree together between and among themselves in the manner following—that is to say, that the said W. Oscar Evins, Robert J. McElrath, Thomas B. Neighbors, Robert C. Wyatt, and J. Robert Burdine, then and

8 there being postmasters at the post-offices of the United States—that is to say, the said W. Oscar Evins being then and there postmaster at Converse, the said Rob't J. McElrath being then and there postmaster at McElrath's, the said Thomas B. Neighbors being then and there postmaster at Dallas, the said Robert C. Wyatt being then and there postmaster at Wyatt's, and the said J. Robert Burdine being then and there postmaster at Cowpens, all of the county of Spartanburg aforesaid—should make false returns to the auditor of the amount of postage stamps, stamped envelopes, postal cards, and newspapers, and periodical stamps cancelled as postage on matter actually mailed, and of postage-due stamps cancelled in payment of undercharges and unpaid postage upon matter delivered, for the purpose of increasing their respective compensa-

tion as such postmasters, and that they, together with the said Charles P. Barrett, should sell and dispose of the postage stamps, stamped envelopes, postal cards, periodical stamps, and postage-due stamps in the said accounts returned as having been cancelled, but which had not been cancelled, and to convert the proceeds of such sale to their own use and to defraud the United States of the same.

And the jurors aforesaid upon their oaths aforesaid do further present that thereafter, in order to effect the object of the conspiracy aforesaid, the said W. Oscar Evins, Robert J. McElrath, Thomas B. Neighbors, Robert C. Wyatt, and J. Robert Burdine, for the purpose of fraudulently increasing their compensation as such postmasters as aforesaid, wilfully, knowingly, and unlawfully did make
9 false and fraudulent returns to the auditor of the business of their respective offices, as such postmasters, of the amounts of postage stamps, stamped envelopes, postal cards, and newspapers, and periodical stamps cancelled as postages on matter actually mailed, and of postage-due stamps cancelled in payment of undercharges and unpaid postages upon matter delivered by them at said post-offices respectively, and thatt he said W. Oscar Evins, Robert J. McElrath, Thomas B. Neighbors, Robert C. Wyatt, and J. Robert Burdine, postmasters as aforesaid, in order to effectuate the conspiracy aforesaid did deliver to the said Charles P. Barrett and the said Charles P. Barrett did receive of and from the said W. Oscar Evins, Robert J. McElrath, Thomas B. Neighbors, Robert C. Wyatt, and J. Robert Burdine, said postmasters, certain postage stamps, stamped envelopes, and postal cards for the purpose thereby of defrauding the United States; and having so received the postage stamps, stamped envelopes, and postal cards as aforesaid, he, the said Charles P. Barrett, did sell and dispose of them to divers persons and did convert the proceeds derived therefrom to his and their own use, contrary to the act of Congress in such case made and provided and against the peace and dignity of the United States.

WM. PERRY MURPHY,
U. S. Attorney.

True bill.

3d Dec'r, 1894.

JEREMIAH SMITH, *Foreman.*

Filed 3d Dec'r, 1894.

J. E. HAGOOD,
Clerk U. S. Circuit Court.

10 And thereafter, to wit, at the February term, 1895, of said United States district court for the western district of South Carolina, begun and holden at Greenville, in said western district, on the 4th day of February, 1895, the Hon. Wm. H. Brawley, judge of said court presiding, the aforesaid case being called, the def't appeared in his own behalf and plead not guilty, and said case came

up for trial before the following-named jury, which was duly organized and sworn to try the issues joined therein, to wit:

T. R. League, foreman.	J. R. Ternight.
J. W. Goldsmith.	L. E. Hodge.
E. C. Crews.	I. D. Isbell.
J. B. Parks.	Miles Babson.
A. R. Fowler.	R. E. Williams.
W. T. J. Woodward.	A. L. Roberts.

which jury having heard the testimony and argument for plaintiff and for def't, and the charge of the court, and considered the case, returned into court with the following verdict:

"As to C. P. Barrett, guilty."
21st February, 1895.

T. R. LEAGUE, *Foreman.*

Sentence Pronounced 21st Feb'y, '95.

"The sentence of the court is that the defendant herein, Charles P. Barrett, be imprisoned in the Ohio penitentiary, at Columbus, for the period of eighteen months and pay a fine of two thousand dollars, to begin upon termination of preceeding sentence.

11

WM. H. BRAWLEY,
U. S. Judge.

21st February, '95.

Order for Stay of Proceedings Pending Appeal.

Filed 21st February, '95.

THE UNITED STATES OF AMERICA, }
Western District of South Carolina. }

In the District Court.

THE UNITED STATES }
vs. } Vio. Sec. 5440, R. S. U. S.
CHARLES P. BARRETT *et al.* }

The jury herein having found the defendant, Charles P. Barrett, guilty, and he having signified his intention to sue out a writ of error to the Supreme Court of the United States, it is ordered that the defendant, Charles P. Barrett, have thirty days from this date in which to prepare and serve his bill of exceptions and to do any and all acts necessary for the effectuation of his writ of error.

It is further ordered that in the meantime and until it is further ordered all proceedings of every sort herein be, and they are hereby, stayed.

WM. H. BRAWLEY,
U. S. Judge.

21st February, '95.

12 *Defendant's Bill of Exceptions.*

Filed 6th March, 1895.

THE UNITED STATES OF AMERICA, *Western Dist. of So. Ca.*

In the District Court.

THE UNITED STATES v. CHARLES P. BARRETT *et al.* } § 5440, U. S. Rev. Stat. Conspiracy.

Defendant's bill of exceptions.

Be it remembered that—

I. On the call of this case for trial and before plea, the defendant, Charles P. Barrett, demurred to the indictment upon the ground that it appeared on the face thereof that, although the crime is charged to have been committed in the county of Spartanburg, in the State of South Carolina, the same being in the western district of said State, yet said indictment was found in the city of Columbia, in the county of Richland, in the State of South Carolina, the same being in the eastern district of said State, and at a time, namely, on December 3, 1894, not authorized by law for the holding of any court of the United States for the western district of South Carolina.

II. On the call of this case for trial and before plea, the defendant, Chas. P. Barrett, filed a plea to the jurisdiction of the court, which was sustained by affidavit upon the grounds:

I. That the jurors of the grand jury by whom the indict-
13 ment was found were drawn, summoned, and empanneled from both the eastern and western districts of South Carolina, instead of from the western district of said State alone.

2d. That the indictment was found in a circuit court of the United States for South Carolina, held in the city of Columbia, in the couny of Richland, the same being in the eastern district of said State, and was remitted to the district court for the western district of said State.

3d. After the attorney of the United States had closed his case the defendant Chas. P. Barrett moved the court that, as the testimony showed that five separate and distinct conspiracies had been committed, one by defendant Barrett with defendant Burdine at one time and place, one by defendant Barrett with defendant Evins at another time and place, one by defendant Barrett with defendant Neighbors at another time and place, one by defendant Barrett with defendant Wyatt at another time and place, and another by defendant Barrett with defendant McElrath at another time and place, and there being no proof connecting the defendants Burdine, Evins, Neighbors, Wyatt, or McElrath with any of the others save defendant Barrett, that the attorney of the United States be required to

elect on which one of the conspiracies he would ask for a conviction.

4th. After verdict, but before judgment, the defendant Barrett moved the court in arrest of judgment on the following grounds, namely:

1. Because the grand jurors that found the indictment were drawn, summoned, and empannelled from both the eastern and
14 western districts of South Carolina, when the crime is charged in the indictment to have been committed in the county of Spartanburg, in the western district of said State.

2d. Because, although the crime is charged in the indictment to have been committed in the county of Spartanburg, in the State of South Carolina, the same being in the western district of said State, yet the indictment was found in the city of Columbia, in the county of Richland, in the eastern district of South Carolina, at a time, namely, on Dec. 3, 1894, not authorized by law for holding any court of the United States in the western district of South Carolina.

3d. Because the indictment was remitted, not to the district court of the United States for the eastern district of South Carolina, but to the district court for the western district of said State.

The court overruled all these objections, and also the motion in arrest of judgment; to which rulings the defendant Barrett duly excepted and offered the above four bills of exceptions and prayed that they be signed, sealed, and made a part of the record, which is accordingly done.

WM. H. BRAWLEY, [L. S.]
U. S. Judge.

15 *Assignment of Errors & Petition for Writ of Error & Supersedeas.*

Filed 30th July, '95.

THE U. S. OF AMERICA,
Western District of South Carolina.

In the District Court.

THE UNITED STATES
vs.
CHARLES P. BARRETT *et al.*

Assignment of errors.

To the Hon'ble W. H. Brawley, judge of the district court of the United States for the western district of South Carolina:

The defendant Chas. P. Barrett respectfully assigns the following errors to the judgment in this cause and to the rulings of the presiding judge before, during, and after the trial:

First.

That the court erred in overruling the demurrer of the defendant to the indictment, it appearing on the face thereof that the crime

was committed in the county of Spartanburg, in the western district of South Carolina, when the same was found in the city of Columbia, in the county of Richland, in the eastern district of said State, and at a time, namely, on December 3d, 1894, not authorized by law for holding any court of the United States for the western district of South Carolina.

Second.

That the court erred in overruling the defendant's plea to
16 the jurisdiction of the court, the grand jury that found the indictment having been drawn, summoned, and empannelled from both the eastern and western districts of said State alone, and said indictment having been found in a circuit court held in the city of Columbia, in the county of Richland, in the eastern district of said State, and was remitted to the district court for the western district of said State.

Third.

That the court erred in not requiring the attorney of the United States at the close of the testimony in his case to elect on which one of the five separate and distinct conspiracies proven to have been committed that he would rely for a conviction, the testimony shewing that there were five different conspiracies, committed at different times by different parties—that is to say, a separate conspiracy by defendant Barrett and defendant Burdine at one time and place, a separate conspiracy by defendant Barrett and defendant Evins at another time and place, a separate conspiracy by defendant Barrett and defendant Neighbors at another time and place, a separate conspiracy by defendant Barrett and defendant Wyatt at another time and place, and a separate conspiracy by defendant Barrett and defendant McElrath at another time and place.

Fourth.

That the court erred in not arresting the judgment, the grand jurors that found the indictment having been drawn, summoned, and empannelled from both the eastern and western districts of South Carolina, when the offence is charged to have been
17 committed in the county of Spartanburg, in the western district of said State, the indictment having been found at a time and place not authorized by law for the holding of any court of the United States in the western district of South Carolina, namely, on December 3d, 1894, in the city of Columbia, in the eastern district of said State, and the indictment having been remitted to the district court for the western district of South Carolina instead of the eastern district of said State.

Wherefore, for these and other reasons apparent in the rendition of said judgment and the rulings of the court, this deponent prays a writ of error and supersedeas to said judgment; that the same may be allowed and a transcript of this record and proceedings and

papers in this case, duly authenticated, may be sent to the Supreme Court of the United States.

And your petitioner will ever pray, &c.

CHAS. P. BARRETT.

Order Allowing Writ of Error, &c.

It is ordered that the writ of error and supersedeas be allowed as prayed for.

WM. H. BRAWLEY, *U. S. Judge.*

16 August, 1895.

18 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the western district of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you or some of you, between The United States, plaintiff, and Charles P. Barrett, defendant, a manifest error hath happened, to the great damage of the said Charles P. Barrett, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the same at Washington on the 16th day of September next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of our Supreme Court, the 16th day of August, in the year of our Lord one thousand eight hundred and ninety-five.

[Seal District Court United States, Eastern District S. C.]

E. M. SEABROOK,
Clerk of the District Court of the United States for the Dist. of So. Ca.

Allowed by—
WM. H. BRAWLEY, *U. S. Judge*

19 *Certificate of Service.*

Due service of the within writ of error was made on the 16th day of August, 1895, by the filing of a true copy thereof in the clerk's office of the district court of the United States for the western district of South Carolina on that day.

E. M. SEABROOK,
C. D. C. U. S., S. C.

20 THE UNITED STATES OF AMERICA,
Western District of South Carolina.

In the District Court.

THE UNITED STATES
v.
CHAS. P. BARRETT *et al.* } S. 5440, U. S. Rev. Stat. Conspiracy.

Citation on Writ of Error.

The President of the United States to the United States, Greeting:

You are hereby cited and admonished to be and appear at a United States Supreme Court, to be holden at Washington, D. C., on the — day of ——, 1895, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the western district of South Carolina, wherein Chas. P. Barrett is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be — done to the parties in that behalf.

Witness the Honorable M. W. Fuller, Chief Justice of the Supreme Court of the United States, this 16th day of August, 1895.

WM. H. BRAWLEY, *U. S. Judge.*

I accept service of the above citation.

——— ———, *U. S. Att'y.*

I admit service of the above citation this 20th day of August, A. D. 1895.

WM. PERRY MURPHY, *U. S. Att'y.*

[Endorsed:] 5440. The United States *v.* Chas. P. Barrett *et al.* Citation on writ of error. Filed 16th August, 1895. E. M. Seabrook, C. D. C. U. S., S. C. (Original.)

21 *Order to Transmit Record.*

"And thereupon it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Supreme Court, and the same is transmitted accordingly."

[Seal District Court United States, Eastern District S. C.]

E. M. SEABROOK,
C. D. C. U. S., S. C.

Clerk's Certificate.

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the District Court.

I, E. M. Seabrook, clerk of the district court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of the records and proceedings in the case of The United States, plaintiff, against Charles P. Barrett, defendant, above named, rendered as aforesaid, together with the verdict and other things relating to the same, now on file & of record in said court.

In witness whereof set my official signature & seal of said court, at Charleston, S. C., this 13th day of September, A. D. 1895.

[Seal District Court United States, Eastern District S. C.]

E. M. SEABROOK,
C. D. C. U. S., S. C.

Endorsed on cover: Case No. 16,296. W. South Carolina D. C. U. S. Term No., 175. Charles P. Barrett, plaintiff in error, *vs.* The United States. Filed May 11th, 1896.

Agreed

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 175.

CHARLES P. BARRETT, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

FILED MAY 11, 1896.

In the district court of the United States for the western district of South Carolina.

THE UNITED STATES *vs.* CHAS. P. BARRETT, *et al.*	Indictment for conspiracy, in violation of Section 5440, U. S. Revised Statutes.

At a regular term of the circuit court of the United States for the district of South Carolina, held in Columbia, S. C., on the fourth Monday in November, 1894, an indictment was found against Chas. P. Barrett, *et al.*, for conspiracy, in violation of Section 5440, United States Revised Statutes, the caption and beginning of which is as follows: "The United States of America. District of "South Carolina. In the circuit court. At a stated "term of the circuit court of the United States for the "district of South Carolina, begun and holden at Colum- "bia and for the district aforesaid on the fourth Monday "of November, 1894." The indictment is in all respects in proper form, etc., etc.

During that term of the court, to wit, on January 30, 1895, the cause was remitted to the district court of the United States for the western district of South Carolina. A copy of the order is as follows: "On motion of Wm. "Perry Murphy, U. S. attorney for the district of South "Carolina, it is hereby ordered that the above stated case "be remitted from the circuit court of the United States "for the district of South Carolina to the district court of

"the United States for the western district of South "Carolina.

"CHAS. H. SIMONTON,
"*U. S. Circuit Judge.*"

On the same day, the original record in the case was filed in the office of the clerk of the court of the United States for the western district of South Carolina. At the February term, 1895, of said district court, the cause came on to be heard at Greenville, in the county of Greenville, South Carolina. Barrett was convicted and sentenced to eighteen (18) months' imprisonment and to pay a fine.

The indictment charges the offense to have been committed in the county of Spartanburg, South Carolina.

Defendant Barrett, before pleading "not guilty," demurred to the indictment and filed a plea to the jurisdiction of the court, which were overruled by the court. After conviction, but before sentence, he made a motion in arrest of judgment, which was likewise overruled. He then sued out this writ of error to the Supreme Court, which was duly allowed, citation properly served, etc., etc.

BILL OF EXCEPTIONS.

Be it remembered that—

I. On the call of this case for trial, and before plea, the defendant, Chas. P. Barrett, demurred to the indictment on the ground that it appeared on the face thereof that, although the offense is charged to have been committed in the county of Spartanburg, in the State of South

Carolina, the same being in the western district of said State, yet said indictment was found in the city of Columbia, in the county of Richland, in the State of South Carolina, the same being in the eastern district of said State, and at a time, namely, on December 3, 1894, not authorized by law for the holding of any court of the United States for the western district of South Carolina.

II. On the call of this case for trial, and before plea, the defendant, Chas. P. Barrett, filed a plea to the jurisdiction of the court, which was sustained by affidavit, on the grounds:

1. That the jurors of the grand jury by whom the indictment was found, were drawn, summoned, and empaneled from both the eastern and western districts of South Carolina, instead of from the western district of said State alone.

2. That the indictment was found in a circuit court of the United States for South Carolina, held in the city of Columbia, in the county of Richland, the same being in the eastern district of said State, and was remitted to the district court for the western district of said State.

III. After verdict, but before judgment, the defendant, Barrett, moved the court in arrest of judgment on the following grounds:

1. Because the grand jurors that found the indictment were drawn, summoned, and empaneled from both the eastern and western districts of South Carolina, when the crime is charged in the indictment to have been committed in the county of Spartanburg, which is in the western district of said State.

2. Because, although the crime is charged in the indictment to have been committed in the county of Spartanburg, in the State of South Carolina, the said county being in the western district of said State, yet the indictment was found in the city of Columbia, in the county of

Richland, in the eastern district of South Carolina, at a time, namely, on December 3, 1894, not authorized by law for holding any court of the United States in the western district of South Carolina.

3. Because the indictment was remitted, not to the district court of the United States for the eastern district of South Carolina, but to the district court for the western district of said State.

The court overruled all these objections, and also the motion in arrest of judgment. To which rulings the defendant Barrett duly excepted and offered the above four bills of exceptions and prayed that they be signed, sealed, and made a part of the record, which is accordingly done.

WM. H. BRAWLEY, [L. S.]
U. S. Judge.

ASSIGNMENT OF ERRORS.

I. That the court erred in overruling the demurrer of the defendant to the indictment, it appearing on the face thereof that the crime was committed in the county of Spartanburg, in the western district of South Carolina, when the same was found in the city of Columbia, in the county of Richland, in the eastern district of said State, and at a time, namely, on December 3, 1894, not authorized by law for holding any court of the United States for the western district of South Carolina.

II. That the court erred in overruling the defendant's plea to the jurisdiction of the court, the grand jury that found the indictment having been drawn, summoned, and em-

paneled from both the eastern and western districts of said State; and said indictment having been found in a circuit court held in the city of Columbia, in the county of Richland, in the eastern district of said State, and was remitted to the district court for the western district of said State.

3. III. That the court erred in not arresting the judgment, the grand jurors that found the indictment having been drawn, summoned, and empaneled from both the eastern and western districts of South Carolina, when the offense is charged to have been committed in the county of Spartanburg, which is in the western district of said State; the indictment having been found at a time and place not authorized by law for the holding of any court of the United States in the western district of South Carolina, namely, in December, 1894, in the city of Columbia, in the county of Richland, in the eastern district of said State; and the indictment having been remitted to the district court for the western district of South Carolina.

CHAS. P. BARRETT.

AGREEMENT.

We agree that the foregoing five pages shall constitute the record in this case. It is not abbreviated to alter, vary, or contradict the record on file in the case, but to save expense of printing, as well as for the convenience of court and counsel. Should there be any error of omission or commission in this, the original record is to control. And should the court wish any more of the

record printed, the same is to be done by the plaintiff in error.

CHARLES C. LANCASTER,
Counsel for Plaintiff in Error.
JAS. E. BOYD,
Asst. Att'y Gen'l for U. S.

Filed June 17, 1898.

Supreme Court of the United States.

OCTOBER TERM, 1897.

Nos. 836 and 978 (Consolidated).

CHARLES P. BARRETT, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

ON WRIT OF ERROR TO THE CIRCUIT AND DISTRICT COURTS OF THE UNITED STATES FOR THE DISTRICTS OF SOUTH CAROLINA.

Brief for Plaintiff in Error.

CHARLES C. LANCASTER,
Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

Nos. 53 and 175 (Consolidated).

CHARLES P. BARRETT, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

On Writ of Error to the Circuit and District Courts of the United States for the Districts of South Carolina.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASES.

These two cases, Nos. 53 and 175, being between the same parties and involving the identical legal questions, have, on motion of the United States Solicitor General, been consolidated and ordered to be heard together as one case.

At a term of the United States Circuit Court held on the 4th Monday in November, 1894, in the city of Columbia, in the county of Richland, in the State of South Carolina, which is in the eastern district of that State, two indictments were found against Charles P. Barrett *et. al.*, for conspiracy, in violation of section 5440 of the United States Revised Statutes, which is an infamous offense. The grand jury that found the indictments were drawn from both the eastern and western districts of said State, and they charge the offense to have been committed in Spartanburg County, which is in the western district.

During that term only one of the cases was tried. The petit jury were drawn from both the eastern and western districts. Defendant Barrett was convicted and sentenced, and prosecuted a writ of error to the Supreme Court, which is No. 53 on the calendar.

The other indictment, during the same session, was remitted to the United States district court for the western district of South Carolina, and at the February, 1895, term thereof, at Greenville, South Carolina, defendant Barrett was tried, convicted and sentenced, and sued out a writ of error to the Supreme Court, which is No. 175 on the calendar.

The two cases are practically identical, the difference being that No. 53 was tried in the *circuit* court, in the eastern district, by a petit jury drawn from both the eastern district and western districts on an indictment found by a grand jury drawn from both the eastern and western districts, while *No. 175* was tried in the *district* court in the *western* district by a petit jury drawn from the *western* district, on an indictment found by a grand jury drawn from both the eastern and western districts of South Carolina.

The testimony in both cases tended to show that several offenses of conspiracy, if any at all, had been committed, in some of which defendant Barrett was not implicated; while in others he was implicated with some of the defendants at one time and place in one conspiracy, and with certain of the other defendants at another time and place in another and separate conspiracy.

The record fails to show:

First.—That the judge ordered a *venire* to issue for a grand jury, or that a *venire* was in fact issued for either the grand or petit juries, or that a grand jury found the indictments in these two case.

Second.—That the defendant was arraigned.

Third.—That he was present at the rendition of the verdict.

Fourth.—That he was present when sentence was pronounced.

The Exceptions and Assignments of Error Present Two Questions.

First.—Did the trial courts have jurisdiction of the cases?

Second.—Should the trial court have required the district attorney to elect on which one of the separate and distinct conspiracies he would ask for a conviction?

The Record Also Presents Three Other Questions.

First.—Should the record affirmatively show that a *venire* for the grand jury was ordered by the judge, that it was in fact issued for the grand and petit juries, and that a grand jury of not less than sixteen and not more than twenty-three persons found the indictments in these two cases.

Second.—Should the defendant have been arraigned?

Third.—Should the defendant have been present at the rendition of the verdict and the sentence of the Court?

ASSIGNMENTS OF ERROR.

IN CASE NO. 53.

I.

That the Court erred in overruling the defendant's challenges to both the grand and petit jurors, the alleged offense being charged in the indictment to have been committed in the county of Spartanburg, in the western district of South Carolina, and the panels of both the grand and petit jurors being drawn from both the eastern and western districts of said State.

II.

That the Court erred in overruling the demurrer of the defendant to the indictment, the alleged offense being charged in the indictment to have been committed in the county of Spartanburg, in the State of South Carolina, the same being in the western district of said State, and the indictment being found in the city of Columbia, in the county of Richland, in the eastern district of said State, at a time, namely, on the

day of November, 1894, not authorized by law for the sitting of any court of the United States for the western district of South Carolina.

III.

That the Court erred in overruling the defendant's plea to the jurisdiction of the court, the alleged offense being charged in the indictment to have been committed in the county of Spartanburg, in the western district of South Carolina, and the trial was had in the city of Columbia, in the county of Richland, in the eastern district of said State.

IV.

That the court erred in not requiring the United States attorney, at the close of the testimony, to elect on which one of the alleged conspiracies he would rely for a conviction, the evidence showing that several conspiracies, if any at all, had been committed, in some of which the defendant Barrett was not implicated; while in others he was implicated with some of the defendants at one time and place in one conspiracy, and with certain of the other defendants at another time and place in another and separate conspiracy.

V.

That the Court erred in not arresting the judgment, the grand and petit jurors being drawn from both the eastern and western districts, instead of from the western district alone; the indictment being found in the city of Columbia, in the county of Richland, in the eastern district of South Carolina, although the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, in the western district of said State; the trial itself having taken place, not in the western district of South Carolina, the place of the alleged commission of the offense, but in the city of Columbia, in the county of Richland, in the eastern district of said State, and at a time not authorized by law for any court of the United States to sit in the western district of said State.

ASSIGNMENTS OF ERROR.

In Case No. 175.

I.

That the Court erred in overruling the demurrer of the defendant to the indictment, it appearing on the face thereof that the crime was committed in the county of Spartanburg, in the western district of South Carolina, when the same was found in the city of Columbia, in the county of Richland, in the eastern district of said State, and at a time, namely, on December 3, 1894, not authorized by law for holding any court of the United States for the western district of South Carolina.

II.

That the Court erred in overruling the defendant's plea to the jurisdiction of the court, the grand jury that found the indictment having been drawn, summoned and empaneled from both the eastern and western districts of said State; and said indictment having been found in a circuit court held in the city of Columbia, in the county of Richland, in the eastern district of said State, and was remitted to the district court for the western district of said State.

III.

Third Assignment of Errors in Case No. 175. (Omitted to be printed in the abbreviated records.)

The Court erred in not requiring the Attorney of the United States, at the close of the testimony in this case, to elect on which one of the five separate and distinct conspiracies proven to have been committed that he would rely for a conviction, the testimony showing that there were five different conspiracies committed at different times by different parties—that is to say, a separate conspiracy by defendant Barrett and defendant Burdine at one time and place; a separate conspiracy by defendant Barrett and defendant Evins at another time and place; a separate conspiracy by defendant Barrett

and defendant Neighbors at another time and place; a separate conspiracy by defendant Barrett and defendant Wyatt at another time and place; and a separate conspiracy by defendant Barrett and defendant EcElrath at another time and place.

IV.

That the Court erred in not arresting the judgment, the grand jurors that found the indictment having been drawn, summoned and empaneled from both the eastern and western districts of South Carolina, when the offense is charged to have been committed in the county of Spartanburg, which is in the western district of said State; the indictment having been found at a time and place not authorized by law for the holding of any court of the United States in the western district of South Carolina, namely, in December, 1894, in the city of Columbia, in the county of Richland, in the eastern district of said State, and the indictment having been remitted to the district court for the western district of South Carolina.

BRIEF OF ARGUMENT.

FIRST POINT.

The First, Second, Third, and Fifth Assignments of Error in Case No. 53, and the First, Second, and Fourth Assignments of Error in Case No. 175 present the Question of the Jurisdiction of the Court Below to Try these Cases.

I.

Both indictments were found at a circuit court for the eastern district of South Carolina, which convened at Columbia, in the county of Richland, in the State of South Carolina, on the 4th Monday in November, 1894. There is no question but what that is in the *eastern* district, if, in fact, there are two *districts*.

Each indictment charges the offense to have occurred in Spartanburg county, South Carolina, which is in the *western* district, if there are two *districts*.

The trial in No. 53 occurred in Columbia. Juries were drawn from all over the State. No. 175 was remitted, agreeably to the circuit judge's exact language, to the "district court for the *western district* of South Carolina." The trial in this case occurred in Greenville, in the western district, and by a jury from that district.

The grand jurors that found the indictment were drawn from all over the State, from both districts.

There will be no dispute over the law that, both by the Constitution, as well as statutes passed in pursuance thereof, that it is indispensable that the trial (including the indictments) must have occurred in the district of the commission of the crime. But should that question arise, the authorities are all one way.

The Federal Constitution jealously guards trials by juries of the vicinage and near the defendant's home. Art. 3, Sec. 2, Subd. 3, of that instrument says:

"Trials shall be by jury, and shall be in the State where the crimes shall have been committed."

But as soon as Congress met (the first session of the first Congress) and passed the Judiciary Act, dividing the United States into districts (September 24, 1789) and establishing the United States courts, they then, on the very next day (September 25, 1789), passed Art. 6 of the Amendments to the Constitution, requiring the trial to occur both in the State and *district* wherein the crime was committed.

This shows conclusively in what sense the word "district" is meant to be used—a Federal judicial district, like the one referred to in the Judiciary Act. Story and Cooley, in their Commentaries on the Constitution, say so in unmistakable terms. So do the courts of the United States.

There being no question regarding the fact that both indictments, although laying the offense in the western district (Spartanburg Co., Sec. 546, U. S. Rev. Stat.) and the indictments having been found outside the territorial limits of that district (Richland Co.) and by grand jurors not drawn from

that district exclusively (but from the eastern as well), the court was without any valid indictment, and, of course, without any authority to hear the case.

The statutes passed in pursuance of the Constitution are in accord with it. The district court has jurisdiction of all crimes committed within their respective districts.

U. S. Rev. Stat., Sec. 563.

The circuit courts have jurisdiction of all crimes committed in the districts for which they sit.

Sec. 629, U. S. Rev. Stat., Subd. 20.

II.

There are Two Judicial District in South Carolina With a Circuit and District Court for Each District.

By the 2d section of the act of September 24, 1789, the United States was divided into thirteen districts, one to consist of the State of South Carolina and to be called South Carolina district.

The 3d section provided that there be a court called a district court in each of the aforementioned districts, to consist of one judge who shall be called a district judge, and provided for the times and places of holding said courts.

The 4th section provided that the before mentioned districts shall be divided into three circuits and be called the eastern, the middle, and the southern circuit, and the southern circuit shall consist of the *districts* of South Carolina and Georgia, and that there shall be held annually in *each district* of said circuits two courts, which shall be called circuit courts, and shall consist of any two Justices of the Supreme Court and the *district* judge of *such districts.*

These sections clearly established a circuit court and a district court in the district of South Carolina.

In creating the circuit court the 4th section expressly provided that it shall consist of two Justices of the Supreme Court and the district judge of each district, so that the circuit court was confined to each district because it could not

exist without the district judge of each district, who was a component part of the court. The whole scheme of the judiciary act was to have a district and a circuit court in each district.

This is made manifest from the fact that the circuit court could not exist outside of the territorial limits of the district court and the district judge.

It therefore necessasily follows that where there was a district court and a district judge there necessarily was a circuit court.

This was the law when the act of February 21, 1823 (3 Stats, 726), was passed dividing South Carolina into two judicial districts—the eastern and the western.

This act specifically and in terms establishes a district court in each district with one district judge for both districts.

It therefore follows as a legal sequence that this act necessarily established a circuit court for each district for the reason that this act only amended the judiciary act, in that it made two judicial districts in South Carolina instead of one as heretofore, but it did not change that provision of section 4 of the judiciary act, which provided that there shall be a circuit court in each district (now the eastern and western) and shall consist of two Justices of the Supreme Court and the district judge of each district (now the eastern and western districts of South Carolina).

This proposition is so clear that it amounts to demonstration.

While this legislation fails to provide for sessions of the circuit court in the western district, owing no doubt to the paucity of business in that rural part of the State, yet this does not impair, much less destroy, the existence of the circuit court itself.

Toland *vs.* Sprague, 12 Pet., 328.
Raildoad Co. *vs.* Railroad Co., 15 How., 243.

This was the condition of the district and circuit courts in the eastern and western districts of South Carolina for over thirty-three years up to the act of August 16, 1856 (11 Stats., 43).

During this period and extending to 1858 divers acts of Congress were passed regulating the sessions of the courts in the eastern and western districts of South Carolina, but in no way affecting the judicial districts in which the words "district of South Carolina," "State of South Carolina, and simply" South Carolina are indifferently used in referring to the courts in the eastern and western districts.

See act May 25, 1824; act March 3, 1825; act May 4, 1826; February 24, 1829; March 1, 1845; August 16, 1856; and February 10, 185—.

By the act of August 16, 1856, the district court for the western district of South Carolina was vested with circuit court powers, thereby obviating the necessity of providing sessions of the circuit court in that district, since a district court with circuit court jurisdiction is in legal contemplation a circuit court.

Exparte Insurance Co., 18 Wall., 417.

This embraces the whole of the legislation affecting the courts of the United States in South Carolina at the adoption of the Revised Statutes June 22, 1874.

For a full exposition of the law on this subject prior to the adoption of the Revised Statutes of the United States, the attention of the Court is invited to the very learned argument of General Edward McCrady, an eminent lawyer of South Carolina, written in 1872, and found in the appendix to 3 Hughes Reports, 665.

III.

Sections of the Revised Statutes Pertaining to the District and Circuit Courts for the Eastern and Western Districts of South Carolina.

If there were the shadow of a doubt regarding there being two judicial districts in South Carolina with a district and circuit court in each at the time of the adoption of the Revised Statutes of the United States, every vestige thereof will be dispelled by an examination of the following sections relative to that subject:

SECTION 530. "The United States shall be divided into judicial districts as follows:

SEC. 531. "The States of California, Connecticut, Delaware, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, Oregon, Rhode Island, Vermont, and West Virginia, each, shall constitute one judicial district." (Twenty in all. South Carolina is not named.)

Here follows the other States in the Union—those that are divided into two or more districts—(17 in number) and they go on down in alphabetical order till you get to South Carolina.

SEC. 546. "The State of South Carolina is divided into two districts, which shall be called the eastern and western districts of the district of South Carolina. The western district includes the counties of Lancaster, Chester, York, Union, *Spartanburg*, Greenville, Pendleton, Abbeville, Edgefield, Newberry, Laurens, and Fairfield, as they existed February 21, 1823. The eastern district includes the residue of said State."

SEC. 551. "A district judge shall be appointed for each district, except in the cases hereinafter provided. Every such judge shall reside in the district for which he is appointed. * * *

SEC. 552. "There shall be appointed in each of the States of Alabama, Georgia, Mississippi, South Carolina and Tennessee, one district judge, who shall be district judge for each of the districts included in the State for which he is appointed, and shall reside within some one of the said districts. * * *

SEC. 571. "The district courts for the western district of Arkansas, the northern district of Mississippi, *the western district of South Carolina*, and the district of West Virginia shall have, in addition to the ordinary jurisdiction of district courts, jurisdiction of all causes, except appeals and writs of error, which are cognizable in a circuit court.

This section establishes in South Carolina a circuit court for the western district in fact and in law, though not in name.

Exparte Insurance Co., 18 Wall., 417.

SEC. 572. "The regular terms of the district courts shall be held at the times and places following:" (At page 101) "In the eastern district of South Carolina, at Charleston, on the first Monday in January, May, July and October. In the western district, at Greenville, on the first Monday in August.

SEC. 608. "Circuit Courts are established as follows: One for the three districts of Alabama, one for the eastern district of Arkansas, one for the southern district of Mississippi, and one for each district in the States not herein named; and shall be called the circuit courts for the districts for which they are established."

SEC. 563. "The district courts shall have jurisdiction as follows:

First. Of all crimes and offenses cognizable under the authority of the United States, committed within their respective districts. * * * The punishment of which is not capital. * * *.

SEC. 629. "The circuit courts shall have original jurisdiction as follows: (Par. 20, page 112). Exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except where it is or may be otherwise provided by law, and concurrent jurisdiction with the district courts of crimes and offenses cognizable therein.

SEC. 658. "The regular terms of the circuit courts shall be held in each year, at the times and places following * * * (page 122): In the district of South Carolina, at Charleston, on the first Monday in April, and at Columbia on the fourth Monday of November.

SEC. 767. "There shall be appointed in each district, except in the middle district of Alabama, and the northern district of Georgia, *and the western district of South Carolina*, a person learned in the law, to act as attorney for the United States in such district. * * * The district attorney of the eastern district of South Carelina shall perform the duties of district attorney for the western district of said State.

SEC. 776. "This section is identical with section 767, save that this refers to the United States Marshals, while the other relates to United States attorneys.

SEC. 817. "The grand and petit jurors for the district court, sitting in the western district of South Carolina, shall be drawn from the inhabitants of said district who are liable, according to the laws of said State, to do jury duty in the courts thereof; and all jurors shall be drawn during the sitting of the court for the next succeeding term.

SEC. 1037. "Whenever the district attorney deems it necessary, any circuit court may, by order entered on its minutes, remit any indictment pending therein to the next session of the district court of the same district, where the offense charged in the indictment is cognizable by the said district court. And in like manner any district court may remit to the next session of the circuit court of the same district any indictment pending in the said district court.

SEC. 1038. "Same relative to remitting case to circuit court 'of same district' when the district court thinks that important questions of law are involved."

This is all that the Revised Statutes say on the subject, and they demonstrate that there are two districts. But if there were any question in regard to the matter, it will be settled conclusively by this: June 27, 1866, the act of Congress was passed authorizing the appointment of a commission to codify the United States Statutes. This commission finished its work and submitted it to Congress. It is like the report of a legislative committee. It is styled "First Commissioner's Draft," and is abbreviated "1 Com. D." The commission, *in regard to South Carolina*, recommended that it be made *one district* with *two divisions*. Every section was framed in conformity to that idea. But when the matter came before Congress, that body refused to adopt that part of the commission's report, but, on the contrary, constituted *two districts*.

By reference to the "1 Com. D." and comparing the sections there with the corresponding sections in the United States Revised Statutes, it is very clear. This makes it certain that the matter of "Divisions" and "Districts" was expressly considered and as expressly made *districts* and not *divisions*. This also accounts for the singular phraseology in section 546 of the Revised Statutes, wherein the useless

and meaningless phrase "of the district" in the second line thereof occurs.

Abstract from First Commissioners' Draft to Codify the Statutes of the United States.

This draft (p. 301), under chapter 1 "of Judicial Districts," sections 1 and 2, puts South Carolina as *one district.*

Here follows section 17, corresponding to section 546, R. S.:

"The *district* of South Carolina is divided into two *divisions*, which shall be called the eastern and western *divisions* of the district of South Carolina. The western *division* includes the counties of Lancaster, &c., as they existed February 1, 1823. The eastern *division* includes the residue of said State."

IV.

Acts of Congress Affecting the Courts and Judicial Districts of South Carolina Passed Since the Adoption of the Revised Statutes of the United States.

Act of January 31, 1877, ch. 41, 19 Stats., 230, amending among other sections of the Revised Statutes, section 571, by adding "eastern district of Arkansas." This act divided Arkansas into two districts; hence the change. South Carolina was again recognized as having two judicial districts.

Act of February 6, 1889, ch. 113, 25 Stats., 655, abolishes circuit court power of the district court, and establishes among other things a circuit court of the United States for the western district of South Carolina, and provides for the sessions of said circuit court.

Act of April 26, 1890, ch. 165, 26 Stats., 71, regulating the sitting of courts of the United States within the district of South Carolina.

Act of July 23, 1892, ch. 235, 27 Stats., 261, providing for a May term of the district court of the United States for the Eastern district of South Carolina.

Act of May 28, 1896, ch. 252, 29 Stats., pp. 140, 180, 182, making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year end-

ing June 30, 1897, and fixing the salaries of the United States attorney and marshal for the eastern and western district of South Carolina.

Act to appoint a United States attorney and marshal for the western district of South Carolina passed the Senate unanimously on January 7, 1897 (S. 811), Cong. Record of January 7, 1897, p. 548, *et seq.*

In the debate on the passage of this bill, Senator Hoar, chairman of the Judiciary Committee of the Senate, says there are two judicial districts in the State of South Carolina.

Attorney General Harmon, in an official opinion to Representative (now Senator) McLaurin, of South Carolina, of date February 29, 1896, which is published in the Congressional Record, March 4, 1896, page 2736, says there are two districts in South Carolina.

Circuit Judge Simonton, in remitting case No. 175 from the *circuit* to the *district* court expressly says to the "district court for the western district in South Carolina." (Printed Record, pp. 1, 2.)

This legislation clearly affirms and reaffirms the legislation contained in the Revised Statutes which established two separate and distinct judicial districts in South Carolina, with a district and circuit court in each.

V.

It may be Contended by the Defendant in Error that the Act of April 26, 1890, Ch. 165, 26 Stats., 71, Abolished Two Judicial Districts and Created Only One District for the State.

An examination of this legislation will clearly show that this contenion is erroneous. It cannot be denied that up to the time of the passage of the said act there were two judicial districts in South Carolina with a circuit and district court for each.

The object of the act was to fix the time and places of the terms and sittings of all the United States courts in South

Carolina and not to rearrange the districts or the courts therein.

The act, as its title indicates, is "to regulate the sittings of the courts of the United States" in South Carolina. This is manifest from the fact—

1. Two additional terms were provided for in Greenville—one a district and the other a circuit court—on the first Monday in February.

2. A session was provided for the district court in Columbia on the fourth Monday in November.

3. The time of holding the spring term of the district court for the eastern district in Charleston was changed from the first Monday in May to the first Monday in April.

4. The October term of the district court in Charleston was dispensed with.

The whole object and intention of Congress in passing the first section of said act was to regulate the terms of the circuit courts for the State and not to change the judicial districts, and this is made manifest when taken in connection with sections 3 and 4 of said act, which expressly and in terms provide for the regular terms of the district courts for the eastern and western districts.

It would be stretching the rule of statutory construction far beyond any known precedent to hold that Congress in this act by indirection abolished the judicial districts for the circuit courts and without any apparent reason retained the two judicial districts for the district courts.

To admit that this act abolished two districts for the circuit court, it must also be conceded that it repealed the acts of June 30, 1879, 21 Stats., 43, regulating the drawing of grand and petit jurors and the appointment of a jury commissioner for each judicial district, as well as the act of February 6, 1889, 25 Stats., 655, which deprived the district court for the western district of circuit court powers and established in terms a circuit court for said western district.

What, then, becomes of the jury commissioner and clerk

of the circuit court for each district, and the records of said courts?

By the provisions of section 1037, Rev. Stats., the circuit court on motion of the district attorney may remit any indictment pending therein to the next session of the district court of the *same* district, where the offense charged in the indictment is cognizable by the said district court. And in like manner any district court may remit to the next session of the circuit court of the *same* district any indictment pending in the said district court.

If the contention of the defendant in error be sound that there is but one district in South Carolina of the circuit conrt, then it follows as as a legal conclusion that the circuit court for the district of South Carolina violated the provisions of section 1037, Rev. Stat., in remitting case No. 175 to the district court for the *western* district of South Carolina, for the plain reason that the western district of South Carolina is not the *same* district as the district of South Carolina, but a separate and distinct district with separate and distinct powers and territorial limits.

If it be contended, however, that the Act of 1890 repealed section 1037, Rev. Stats., under what provision of law did the circuit court for the district of South Corolina, on motion of the district attorney, remit case No. 175 to the district court for the western district of said State?

It is submitted there was no existing law giving the circuit court any such power.

VI.

Each Section of an Act of Congress Shall Contain but a Single Proposition of Enactment.

The first section of the act of 1890 provides for the regular terms of the circuit courts in South Carolina. If said section also provides that there shall hereafter be but one district for the circuit court in said State, it violates the provision of section 10, Rev. Stats., and is contrary to the policy of Congress that each section of an act shall contain a single proposition of enactment.

VII.

Laws Cannot be Repealed by Inferences or Implications.

"It is supposed that the legislature would not make so important an innovation without a very explicit expression of its intent."

Black on Stats., sec. 55, p. 123.
Maxwell on Stats., p. 152.

If it is to be inferred that Congress supposed when this act was passed that the State of South Carolina contained only one judicial district, the supposition cannot be accepted as equivalent to a legislative act, or as indicating a purpose to change or abolish the districts of said State.

In Postmaster General *vs.* Early, 12 Wheat., 136, 148, Chief Justice Marshal, in construing an act of Congress, lays down the doctrine that "a mistaken opinion of the legislature concerning the law does not make law."

U. S. *vs.* Claflin, 97 U. S., 546, 548,
Ottawa *vs.* Perkins, 94 U. S., 260, 270.
District *vs.* Hutten, 143 U. S., 18, 27, 28.
20 Opinion Attorney General, 530, 532.

Laws cannot be changed or repealed by mere inferences or implications, especially where the life or liberty of the citizen is affected.

In re Bonner 151 U. S., 256, 257, Justice Field, in deciding a similar question, says: "That in all cases where life or liberty is affected by its proceedings, the court must keep strictly within the limits of the law authorizing it to take jurisdiction and to try the case and to render judgment. It cannot pass beyond those limits in any essential requirement in either stage of the proceedings, and its authority in these particulars is not to be enlarged by any mere inferences from the law or doubtful construction of its terms."

This doctrine has been squarely reaffirmed in

Post *vs.* U. S., 161 U. S., 585.
Rosecrans *vs.* U. S., 165 U. S., 257, 263.

In the latter case, Justice Brewer says:

"When there are statutes clearly defining the jurisdiction of the courts, the force and effect of such provisions should not be disturbed by a mere implication flowing from subsequent legislation. In other words, where Congress has expressly legislated in respect to a given matter, that express legislation must control in the absence of subsequent legislation equally express, and is not overthrown by any mere inferences or implications to be found in such subsequent legislation."

This construction of the act of 1890 is fully sustained by an official opinion of Attorney-General Harmon found in Cong. Record of March 4, 1896, p. 2736, as follows:

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., February 29, 1896.

SIR: With reference to the question whether there are two judicial districts in South Carolina or only one, I beg to say that I have caused an examination to be made with the following result:

When the first register of this Department was prepared, in 1888, Mr. Jenks, then Solicitor-General, examined the question, which was brought to his attention by the appointment clerk, and advised that South Carolina be entered therein as a single district, which was done and has been repeated in subsequent issues.

I learn further that the question arose at the commencement of President Harrison's term and was considered by Attorney-General Miller, but I am unable to find any record of the conclusion he reached, if he reached any. The practice, however, has grown up of considering the State as a single district in all matters connected with the judicial affairs of that State, including appointments to office. Various acts of Congress refer to the State as a single district, although they also mention it as two districts. For instance, the act of April 26, 1890 (26 Stat., 71), is entitled "an act to regulate the sitting of the courts of the United States within the district of South Carolina," yet sections 3 and 4 speak of eastern and western districts. But it is useless to multiply instances. I am unable to find anything in the statutes which affects the provisions of sections 546 and 767, Revised Statutes, which divide the State into two districts. I think, therefore, that you should call the attention of the Judiciary Committee to this matter and have the bill amended to fit the case.

Very respectfully,

JUDSON HARMON,
Attorney-General.

Hon. JOHN L. MCLAURIN,
House of Representatives.

This view of the law was adopted by Congress in the passage of the act of May 28, 1896, 29 Stats., 180, 182, then under consideration.

VIII.

There Being Two Judicial Districts for the Circuit and District Courts in South Carolina, the Courts were without Jurisdicton, and the Indictments in these Cases were Null and Void.

On the face of the indictments it appears and cannot be controverted that the offenses were committed in Spartanburg county in the western district. It also appears that the indictments were found in the city of Columbia, which is in Richland county in the eastern district, by jurors drawn from both of the said districts.

It further appears that the trial in case No. 53 took place in Columbia by a petit jury drawn from both districts.

The question of law here involved is clear and unanswerable. In criminal cases the jurors must be drawn from the vicinage—the State and district within which the crime was committed.

Art. 3, sec. 2, subd. 3, of the Constitution provides that "the trial of all crimes * * * shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed."

The sixth amendment to the Constitution provides:

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and *district* wherein the crime shall have been committed, which district shall have been previously ascertained by law.

Section 563, Rev. Stats., provides that the district courts shall have jurisdiction "of all crimes and offenses cognizable under the authority of the United States committed within their respective *districts*."

Section 629, par. 20, Rev. Stats., gives to circuit courts "exclusive cognizance of all crimes cognizable under the authority of the United States, except where it is or may be otherwise provided by law, and concurrent jurisdiction with the district courts of crimes and offenses cognizable therein."

"The judiciary act has divided the United States into judicial districts." Within these districts a circuit court is

required to be holden. The circuit court for each district sits within and for that district and is bounded by its local limits.

Toland *vs.* Sprague, 12 Pet., 328.
Railroad Co. *vs.* Railroad Co., 15 How., 243.

Jurisdiction is coextensive with the territorial limits of the district.

Rosecrans *vs.* U. S., 165 U. S., 260.

The jury must be summoned from the vicinage—the district where the crime is supposed to have been committed.

Cooley on Const. Lim., sec. 319.

SECOND POINT.

The Fourth Assignment of Error in Case No. 53 of the Abbreviated Printed Record and the Third Assignment of Error in Case No. 175 of the Original Record Raise this Question: Did the Trial Court Err in not Requiring the District Attorney at the close of his Testimony to Elect on which one of the Separate and Distinct Conspiracies he would Rely for a Conviction?

I.

CASE No. 53.

Fourth Bill of Exceptions. (Omitted to be printed in the abbreviated record.)

"Be it remembered that, after the United States Attorney had closed his case, the said defendant moved the Court, that since the testimony had disclosed the fact that at least four conspiracies, if any at all, had, been proven, in some of which defendant, Chas. P. Barrett, was not implicated, and in others he was implicated with certain of the defendants, while in still others, he was implicated with certain of the defendants at one time and place and with different defendants at another time and place, the Attorney of the United States be required to elect on which one of the alleged conspiracies he would ask for a conviction. This motion was overruled by the Court, to which ruling the said defendant, by counsel, excepted and offered this, his fourth Bill of Exception, and prayed that it be signed, sealed, and made a part of the record, which is accordingly done.

WM. H. BRAWLEY,
U. S. Judge."

[L. S.]

Fourth Assignment of Error. (See printed record, page 5.)

"That the Court erred in not requiring the United States Attorney, at the close of the testimony, to elect on which one of the alleged conspiracies he would rely for a conviction, the evidence showing that several conspiracies, if any at all, had been committed, in some of which the defendant Barrett was not implicated; while in others he was implicated with some of the defendants at one time and place in one conspiracy, and with certain of the other defendants at another time and place in another and separate conspiracy."

CASE NO. 175.

Third Bill of Exceptions. (Omitted to be printed in the abbreviated record). "After the Attorney of the United States had closed his case, the defendant, Chas. P. Barrett, moved the Court that, as the testimony showed that five separate and distinct conspiracies had been committed—one by defendant Barrett with defendant Burdine at one time and place; one by defendant Barrett with defendant Evins at another time and place; one by defendant Barrett with defendant Neighbors at another time and place; one by defendant Barrett with defendant Wyatt at another time and place; and another by defendant Barrett with defendant McElrath at another time and place; and there being no proof connecting the defendants Burdine, Evins, Neighbors, Wyatt and McElrath with any of the others, save defendant Barrett, that the Attorney of the United States be required to elect on which one of the conspiracies he would ask for a conviction. The Court overruled all these objections and also the motion in arrest of judgment. To which rulings the defendant Barrett duly excepted and offered the above four bills of exceptions, and prayed that they be signed, sealed, and made a part of the record, which is accordingly done." (See printed Record, page 4.)

Third Assignment of Errors in Case No. 175. (Omitted to be printed in the abbreviated record.)

"The Court erred in not requiring the Attorney of the United States, at the close of the testimony in his case, to

elect on which one of the five separate and distinct conspiracies proven to have been committed that he would rely for a conviction, the testimony showing that there were five different conspiracies committed at different times by different parties, that is to say: A separate conspiracy by defendant Barrett and defendant Burdine at one time and place; A separate conspiracy by defendant Barrett and defendant Evins at another time and place; a separate conspiracy by defendant Barrett and defendant Neighbors at another time and place; a separate conspiracy by defendant Barrett and defendant Wyatt at another time and place; and a separate conspiracy by defendant Barrett and defendant McElrath at another time and place."

The indictments in both cases are for conspiracy in violation of section 5440, Rev. Stats. They each contain but one count. It is true that in the indictment in case No. 53 there are nominally two counts, yet practically but one, being two ways of stating the same offense, there being but one verdict and sentence. On the face of the indictments it does not appear that more than one offense was charged.

The record shows by the fourth Bill of Exceptions in case No. 53 and third Bill of Exceptions in case No. 175 above that there were four separate and distinct conspiracies in case No. 53; and five separate and distinct conspiracies in case No. 175; that in case case No. 53 the plaintiff in error was in no way connected or implicated in one or more of said conspiracies; that in case No. 175 the separate and distinct conspiracies were committed by separate and different defendants at different times and places.

At the trial below, upon the conclusion of the testimony for the prosecution, the defendant Barrett moved the Court to require the district attorney to elect on which one of the offenses he would rely for conviction, which was overruled and exception duly taken.

II.

MISJOINDER OF OFFENSES AND DEFENDANTS.

It is elementary that duplicity in an indictment is fatal, and equally so the misjoinder of defendants.

Duplicity is the joinder of two or more distinct offenses in one count and is bad.

1 Bish. New Crim. Proc., sect. 432.
Whart. Crim. Pl. and Pr., sect. 243.
State *vs.* Howe, 1 Rich., 261.

Joinder of defendants not permitted where the offenses are separate, the one defendant not being guilty of the same thing as the other.

1 Bish. New Crim. Pr., sect. 470.

In case of duplicity the prosecutor, at the trial, may be put to his election on which charge to proceed.

1 Bish. New Crim. Pr., sec. 470.

By the common law rule any number of offenses might be included in the same indictment, if in separate counts. But under no circumstances could a man be indicted for more than one offense in one count. If this appeared on the face of the indictment, it would be fatal on demurrer or on motion to quash. If it did not appear on the face of the indictment, but from the testimony presented at the trial, the Court would be compelled to put the prosecutor to his election.

By the provisions of the act of 1853 embodied in section 1024, Rev. Stats., the right to indict for separate offenses, even though in separate counts, was limited to three classes of cases; namely, 1st, when there are several charges against a person for the same act or transaction; 2d, or for two or more acts or transactions connected together, and 3d, or for two or more acts or transactions of the same class of crimes or offenses. Even then the court is invested with discretion to put the prosecutor to his election.

The effect of this legislation was to confine the cases in which a person could be tried for more than one offense, at one and the same time, within a very narrow compass, even where the crimes were charged in separate counts.

This doctrine is well settled.

Pointer *vs.* U. S., 151 U. S., 398.
Ingraham *vs.* U. S., 155 U. S., 436.
McElroy *vs.* U. S., 164 U. S., 76.

In the case at bar it is indisputable that the defendant Barrett, the plaintiff in error, was indicted in one case, No. 53, for four separate and distinct offenses in one count, and the other case, No. 175, he was indicted for five separate and distinct offenses in one count, and on the principles of law above set forth it was the duty of the Court, as matter of law, and not of discretion, to put the prosecutor to his election.

THIRD POINT.

Should the Record Affirmatively Show that a Venire for the Grand Jury was Ordered by the Judge; that it was in Fact Issued for the Grand and Petit Jurors, and that a Grand Jury of not less than Sixteen and not more than twenty-three Persons Found the Indictments in these Two Cases?

In case No. 53 the following is a true copy from the record on this point:

"Be it remembered that, heretofore, to wit, on Dec. 3, 1894, before the judge of said court, for the district of South Carolina, the said United States indicted Charles P. Barrett, *et al.*, in a bill of indictment filed by the United States Attorney, upon the affidavits and warrants, which bill is in the words and tenor following": * * *

(Here are proceedings before U. S. Com'r.)

"*Bill of Indictment.*

The United States of America, District of South Carolina.
In the Circuit Court.

At a stated term of the circuit court of the United States for the district of South Carolina, begun and holden at Columbia within and for the district aforesaid, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and ninety-four, *the jurors of the United States of America*, within and for the district aforesaid, upon their oaths, respectively, do *present:* That Chas. P. Barrett (*et al.*), &c. &c.—"True Bill: J. Smith, foreman."

In case No. 175 the record is substantially the same and contains the following words: "The jurors of the United States of America."

The words "*grand jury*" nowhere appear in the indictment in either case.

It is indispensable that the judge of the court issue an order for the venire to issue for the summoning of a grand jury. Sec. 810, Rev. Stats.; U. S. *vs.* Autz, 16 Fed. Rep., 119.

Every grand jury empaneled before any district or circuit court shall consist of not less than sixteen nor more than twenty-three persons. Sec. 808, Rev. Stats.

Writs of venire were required at common law. If they were not issued a conviction was illegal.

Thomson and Merriam on Juries, sect. 70.
U. S. *vs.* Autz, 16 Fed. Rep., 119.

Writs of both grand and petit jurors are parts of the record of conviction. If they have not been issued, the accused has not been charged or convicted by the good and lawful men of the vicinage.

State *vs.* McMurray, 2 Speer (So. Ca.), 216.
State *vs.* Dozier, 3 Strob. (So. Ca.), 33.
State *vs.* Williams, 1 Rich. (So. Ca.), 188.

In the absence of a venire the judgment of conviction is absolutely void. No laches can cure the illegality.

Thomson and Merriam on Juries, sect. 551.
Miller *vs.* State, 33 Miss., 356.
People *vs.* Thurston, 5 Cal., 69.
Preston *vs.* State, 63 Ala., 127.
Barry *vs.* State, 63 *Id.*, 126.

Irregularities in drawing, summoning, or empaneling grand jurors may be waived by failure to move to quash or to plead in abatement. But where some fundamental requisite has not been complied with, the action of the grand jury is *coram not judice*, and objection may be taken by motion in arrest or on error.

Gales' case, 109 U. S., 65.
1 Bish. Crim. Proc., sect. 887, 888.
Harden's Case, 2 Rich. (So. Ca.), 533.

The venire, summoning, empaneling, and swearing of a grand jury, in addition to the fact the legal number found the indictment, are matters of substance and must be affirmatively shown by the record.

Shelp *vs.* U. S., 81 Fed. Rep., 701.

Before a court of last resort affirms a judgment of conviction of at least an infamous crime, it should appear affirmatively from the record that *every step necessary to the validity of the sentence has been taken.*

Crain *vs.* U. S., 162 U. S., 646.

FOURTH POINT.

DEFENDANT NOT ARRAIGNED.

The original record does not disclose the fact that the defendant was arraigned. In case No. 53 the original record contains the following and only statement of facts on this point:

"This case came up for trial December 6, 1894. The defendants being called, the following named defendants entered their plea of 'not guilty,' to wit: Charles P. Barrett, John S. Fisher, *et al.*"

In case No. 175 "the defendant appeared in his own behalf and pleaded 'not guilty.'"

The arraignment is an essential element in the trial of a felony or other infamous crimes, and the record must show this fact affirmatively. In capital or other infamous crimes an arraignment has always been regarded as matter of substance, and must be affirmatively shown by the record.

Shelp *vs.* U. S., 81 Fed. Rep., 701.

Before a court of last resort affirms a judgment of conviction of at least an infamous crime, it should appear affirmatively from the record *that every step necessary to the validity of the sentence has been taken.*

Crain *vs.* U. S., 162 U. S., 646.

The entry of the plea does not include the arraignment, as both are necessary steps to the validity of the sentence. Neither can the defendant expressly waive the arraignment in infamous crimes.

"That which the law makes essential in proceedings involing the deprivation of life or liberty, cannot be dispensed with or affected by the consent of the accused, much less by his mere failure, when on trial and in custody, to object to unauthorized methods."

Hopt *vs.* People of Utah, 110 U. S., 574.

This doctrine is affirmed by the Supreme Court in the following cases:

Schwab *vs.* Berggren, 143 U. S., 442.
Lewis *vs.* U. S., 146 U. S., 370.

FIFTH POINT.

The original record fails to show affirmatively that the defendant was present at the rendition of the verdict and the sentence of the Court.

"At common law no judgment for corporal punishment could be pronounced against a man in his absence."

Ball *vs.* U. S., 140 U. S., 118.

In the prosecution for a felony or infamous crime, it is essential to the protection of one whose life or liberty is involved that he shall be personally present at the trial—that is, at every stage of the trial—when his substantial rights may be affected by the proceedings against him.

If he be deprived of his life or liberty without being so present, such deprivation would be without that due process of law required by the Constitution.

Hopt *vs.* People of Utah, 110 U. S., 574.

The defendant could not waive his right to be present at every proceeding had during the trial, nor cure the error committed in disregarding the same by not objecting or saving an exception at the time.

Cooley Const. Lim., 319; Whart. Cr. L., sect. 3364.
Dougherty *vs.* Com., 69 Pa. St., 286.
Maurer *vs.* People, 43 N. Y., 1.
Dempsey *vs.* People, 47 Ill., 325.
People *vs.* Kohler, 5 Cal., 72.
Younger *vs.* State, 2 W. Va., 579.
Hopt *vs.* People of Utah, 110 U. S., 574.

CHARLES C. LANCASTER,
Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

CHARLES P. BARRETT,
PLAINTIFF IN ERROR,
v.
THE UNITED STATES.

Nos. 53 *and* 175 (*consolidated*).

On Writ of Error to the Circuit and District Courts of the United States for the Districts of South Carolina.

REPLY BRIEF OF PLAINTIFF IN ERROR.

FIRST POINT.

On page 2 of brief of defendant in error it is stated that one indictment is for conspiracy in violation of section 5440 Rev. Stats., and that the other is for violation of section 5480 Rev. Stats. This is incorrect. Both indictments are for conspiracy in violation of section 5440 Rev. Stats.

This error is practically admitted by counsel for defendant in error in his brief on page 3, where it is stated that both indictments are for conspiracy.

SECOND POINT.

Counsel for defendant in error, on page 4 of his brief, states that there is only one question under consideration in this case, to wit, that of territorial jurisdiction of the courts below, and bases his contention on a stipulation of counsel, contained in the printed records.

This position of counsel for defendant in error is not sustained by the stipulations themselves, which are as follows:

Case No. 53 (R., p. 6):

"We agree that the above and foregoing six pages shall constitute the record for the Supreme Court in this case. It is abbreviated for the purpose of curtailing the expense of printing, as well as for the convenience of court and counsel. It is not intended to alter the record in any way and, therefore, should there be any errors of omission or commission, the original record on file in the clerk's office is to control, and so much of it as the court may require is to be printed by plaintiff in error."

Case No. 175:

"We agree that the foregoing five pages shall constitute the record in this case. It is not abbreviated to alter, vary, or contradict the record on file in the case, but to save expense of printing, as well as for the convenience of court and counsel. Should there be any error of omission or commission in this, the original record is to control. And should the court wish any more of the record printed, the same is to be done by the plaintiff in error."

It is evident from these stipulations that the main purpose was to save the plaintiff in error the expense of printing the whole records, which are voluminous, and contain

much matter that should not have been sent up. It is also obvious that plaintiff in error did not waive any other points in his case disclosed by the records, as it is expressly agreed that any other parts thereof shall be printed, if so desired by the court.

But, however this may be, there is no intention on the part of counsel for plaintiff in error to take any technical advantage of opposing counsel, but he is willing that he be accorded an opportunity to make, if he so desire, an argument, oral or written, or both, in answer to the legal propositions not covered by his brief.

And, in this connection, it is assumed that neither the counsel for the Government nor this court would desire to have erroneous judgments affirmed on a technicality involving the confinement of a citizen for three years in the penitentiary and the payment of fines aggregating $4,500.

THIRD POINT.

Counsel for the Government concedes in his brief (p. 4) that the indictments were found in the city of Columbia, Richland county, which is in the eastern district, and that the offenses are therein charged to have been committed in Spartanburg county, which is in the western district, if there are two districts. But he denies that there are two districts, claiming that they are divisions or subdivisions of one district. In support of this contention he cites section 546 Rev. Stats., and lays stress on the words, "the eastern and western districts of the *district* of South Carolina," insisting that the words "of the district of South Carolina" preserve the original judicial district of the State. To show that this construction is absolutely untenable, it is only necessary at this juncture to make a comparison of the commissioner's draft of the

revision of the laws and section 546 Rev. Stats., as adopted by Congress.

Section 17—1 *Commr. Draft, p.* 307.

"The *district* of South Carolina is divided into two *divisions*, which shall be called the Eastern and Western *divisions* of the District of South Carolina. The Western *division* includes the counties of Lancaster, Chester, York, Union, Spartanburgh, Greenville, Pendleton, Abbeville, Edgefield, Newberry, Laurens, and Fairfield, as they existed February 21, 1823. The Eastern division includes the residue of said State."

Section 546 *Rev. Stats.*

"The *State* of South Carolina is divided into two *districts*, which shall be called the Eastern and Western *districts* of the District of South Carolina. The Western *district* includes the counties of Lancaster, Chester, York, Union, Spartanburgh, Greenville, Pendleton, Abbeville, Edgefield, Newberry, Laurens, and Fairfield, as they existed February 21, 1823. The Eastern *district* includes the residue of said State."

This clearly shows that the phrase "of the district" is a mere clerical error, the result of the amendment of the commissioner's draft. The last line of section 546 emphasizes this meaning when it says "the Eastern *district* includes the residue of *said State*," not of said *district* of South Carolina.

Following this comparison of the sections of the commissioners' draft with the corresponding sections of the Revised Statutes, on this subject, the word "division" is everywhere stricken out and the word "district" is substituted therefor.

Fourth Point.

The *nisi prius* decision of Young *v.* Ins. Co., 29 Fed. Rep. 275, cited in brief of counsel for the Government (p. 10), was rendered by Simonton, J., then a district judge holding a circuit court, and was a civil case involving only the question of the taxation of costs. But this decision was rendered on December 10, 1886, which was over two years prior to the passage of the act of February 6, 1889, chap. 113, 25 Stats. 655, establishing a circuit

court in the western district of South Carolina *eo nomine* and providing the time and place for holding said court therein.

The cases of—

Post *v.* U. S., 161 U. S. 583, and Logan *v.* U. S., 144 U. S. 263, cited in brief (pp. 10, 11) of counsel for the Government, have no bearing on the point now under consideration, as they both refer to divisions of a district, and not as to whether there were one or two districts in the State, and in those cases there was no contest but what they were divisions of one district.

Fifth Point.

In citing section 658, Rev. Stats., counsel for the Government contends that as no sittings or sessions of the circuit court are provided for in the western district, there could be no circuit court for that district. But he fails to consider in this connection section 571, Rev. Stats., which vests the district court for the western district with circuit-court powers, thereby establishing, in effect, though not fact, a circuit court in that district.

Ex parte Insurance Co., 18 Wall. 417.

He also fails to consider section 608, Rev. Stats., which explicitly establishes a circuit court in each of the districts of South Carolina, if, in point of fact, two districts exist by virtue of section 546, and other sections of the Revised Statutes, about which, it seems, there can be no rational doubt.

He also overlooks the provisions of the act of February 6, 1889, which not only establishes a circuit court for the western district by name, but fixes the time and place for its sessions.

Sixth Point.

In referring to the act of April 26, 1890, ch. 165, 26 Stats. 71, counsel for the Government seeks to inform the court that the State of South Carolina has never been considered or dealt with by Congress otherwise than as one district. What becomes of sections 530, 531, 546, 551, 552, 571, 572, 608, 767, 776, and 817 of the Rev. Stats., and the provisions of the acts of Congress subsequent thereto, as follows: Act of January 31, 1877, ch. 41, 19 Stats. 230; act of February 6, 1889, ch. 113, 25 Stats. 655; act of July 23, 1892, ch. 235, 27 Stats. 261; act of May 28, 1896, ch. 252, 29 Stats. 180, 182?

If it had been the intention of Congress to make divisions or subdivisions of a district in South Carolina, it could have found fit words to express its meaning. The word "division" or "subdivision" is well known to Congress when it has made divisions of various districts in many of the States, beginning with Iowa in the year 1859 and continuing down to the present time. But it nowhere appears in any act of Congress that the word "division" is used in reference to the districts of South Carolina.

Counsel for the Government in his brief (pp. 9, 16) calls attention of the court to what he seems to consider as facts, to wit, that a district judge, United States attorney, and marshal, are appointed for the "district of South Carolina." This is so manifestly without foundation that it lacks even plausibility.

On the contrary, a most casual reference to the Statutes will demonstrate that one judge is appointed for both the districts in South Carolina (sections 551, 552, Rev. Stats.), and the district attorney and marshal for the eastern district shall perform the duties of such officers for the

western district (sections 767, 776, Rev. Stats.). See also act May 28, 1896, ch. 252, 29 Stats., pp. 180, 182.

Upon the whole case it is submitted that all the facts and the law are with the plaintiff in error and that the judgments below should be reversed.

CHARLES C. LANCASTER,
Counsel for Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

CHARLES P. BARRETT, PLAINTIFF in error, v. THE UNITED STATES. } No. 53.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

CHARLES P. BARRETT, PLAINTIFF in error, v. THE UNITED STATES. } No. 175.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

There are two of these cases, the first, No. 53, in error to the circuit court of the United States for the

district of South Carolina, and the second, No. 175, in error to the district court of the United States for the western district of South Carolina.

At the regular term of the circuit court of the United States for the district of South Carolina, held at Columbia, in the county of Richland, in the State of South Carolina, in November, 1894, as shown by the record, Charles P. Barrett, the plaintiff in error, together with others, was indicted under section 5440 of the Revised Statutes of the United States for conspiracy to commit an offense against the United States, the object of the alleged conspiracy being, as charged, to violate section 5480 of the Revised Statutes of the United States, and the said Barrett, together with others, was, at the said term of the said court, indicted in another bill for a violation of section 5480 of the Revised Statutes of the United States. The trial in the first case was proceeded with in the circuit court at the said term and Barrett was convicted and sentenced, as shown by the record, and the case comes here by writ of error, and is numbered 53.

The other case was remitted by order of the circuit judge at the said November term, at Columbia, as shown by the record, to the district court for the western district of South Carolina, and was subsequently tried at Greenville, in the said district. Barrett was convicted and sentenced, and this case comes here by writ of error to the district court for the western district of South Carolina, and is numbered 175.

When 53 was called in the regular perusal of the docket, it was passed with the understanding that it

would be argued together with 175, the two cases involving substantially the same points.

The bill of indictment in each case charges the offense to have been committed in the county of Spartanburg, the indictment being, in No. 53, so far as is necessary to present for the consideration of the point involved, as follows:

> The United States of America, district of South Carolina, in the circuit court, to wit:
>
> At a stated term of the circuit court of the United States for the district of South Carolina, begun and holden at Columbia, within and for the district aforesaid, on the fourth Monday in November, in the year of our Lord one thousand eight hundred and ninety-four, the jurors of the United States of America within and for the district aforesaid, upon their oaths, respectively, do present that Charles P. Barrett (here are inserted names of others), together with divers other evil-disposed persons, to the jurors aforesaid unknown, late of the district aforesaid, on the first day of July, in the year of our Lord one thousand eight hundred and ninety-two, at Spartanburg, in the State of South Carolina aforesaid, in the district aforesaid, and within the jurisdiction of this court, etc.

and in No. 175, after the formal parts as above, as follows:

> do present that Charles P. Barrett (&c.), late of the district aforesaid, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and ninety-two, at Spartanburg County, in the State of South Carolina, in said district, and within the jurisdiction of this court, being persons of evil minds and dispositions, etc.,

and the indictments were found by the grand jury of the circuit court of the United States at Columbia, which is in the county of Richland, South Carolina. It is admitted that the county of Spartanburg is located in what is called the western district and that Richland County is located in what is called the eastern district as constituted by section 546 of the Revised Statutes of the United States.

The points suggested by the plaintiff in error in his brief as to the misjoinders in the indictment, the failure of the record to show the order for the *venire*, arraignment, and the presence of Barrett at the rendition of the verdict and when sentence was pronounced, are not under consideration. The plaintiff in error, in person and through his counsel, stipulated with the counsel for the United States that the only point to be presented in these cases should be the question of jurisdiction, and it was expressly agreed that the record to be printed should be curtailed, and only such part of the original record printed as should be necessary to present the question of jurisdiction. The printed record, therefore, presents the sole question of jurisdiction and no other, and this alone will be argued in behalf of the United States. There is no exception shown in the printed record upon which to base an assignment of error on any other point. As will be seen from the printed record in each case, four exceptions were taken in the court below in No. 53 and three in No. 175, and the bills of exception allowed and signed by the presiding judge have reference to the question of jurisdiction, and that alone.

In No. 53 the first exception is to the action of the court in refusing to sustain the challenge to the array of jurors on the ground that both the grand and petit jurors were drawn from both the eastern and western districts of South Carolina, when the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, which said county is located in the western district of South Carolina.

The second exception is to the order of the court overruling demurrer to indictment on the ground that the indictment charges the offense in Spartanburg County, which is in the western district, although the indictment was found in Richland County, which is in the eastern district.

The third exception is based upon the refusal of the court to sustain the plea to the jurisdiction of the court upon the ground that although the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, the same being in the western district of South Carolina, the trial was sought to be held in the city of Columbia, in the county of Richland, in the eastern district of said State.

The fourth exception is to the refusal of the court to arrest judgment upon the grounds set forth in the motion for that purpose, namely: First, because the grand jurors who found the indictment and the petit jurors who found the verdict were drawn from both the eastern and western districts of South Carolina, when the offense is alleged to have been committed in the county of Spartanburg, in the western district of said State; second, because

the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, in the State of South Carolina, the same being in the western district of said State, the indictment was found in the city of Columbia, in the county of Richland, in the eastern district of said State, at a time, namely, on the ——— day of November, 1894, not authorized by law for the sitting of any court of the United States for the western district of South Carolina; third, because, although the alleged offense is charged in the indictment to have been committed in the county of Spartanburg, the same being in the western district of South Carolina, the trial was had in the city of Columbia, in the county of Richland, in the eastern district of said State.

In No. 175, which was tried in the district court at Greenville, the bill of exceptions is—

First, the refusal of the judge to sustain the demurrer to the indictment based on the ground that it appeared on the face of the indictment that, although the offense is charged to have been committed in the county of Spartanburg, in the State of South Carolina, the same being in the western district of the said State, yet said indictment was found in the city of Columbia, in the county of Richland, in the State of South Carolina, the same being in the eastern district of said State, and at a time not authorized by law for the holding of any court of the United States for the western district of South Carolina.

Second, the refusal of the court to sustain the plea to the jurisdiction founded, first, "that the jurors of the grand jury by whom the indictment was found were

drawn, summoned, and impaneled from both the eastern and western districts of South Carolina instead of from the western district of said State alone;" second, "that the indictment was found in the circuit court of the United States for South Carolina, held in the city of Columbia, in the county of Richland, the same being in the eastern district of said State, and was remitted to the district court for the western district of said State;" and

Third, the refusal of the court to arrest the judgment after verdict upon a motion based upon the following grounds: First, that the grand jurors that found the indictment were drawn, summoned, and impaneled from both the eastern and western districts of South Carolina, when the crime is charged to have been committed in the county of Spartanburg, which is in the western district of said State; second, because, although the crime is charged to have been committed in the county of Spartanburg, in the State of South Carolina, the said county being in the western district of said State, yet the indictment was found in the county of Richland, in the eastern district of South Carolina, at a time not authorized by law for the holding of any court of the United States in the western district of South Carolina; and third, because the indictment was remitted, not to the district court for the eastern district of South Carolina, but to the district court for the western district of said State.

It will be seen from the preceding statement of the exceptions taken in the court below that although the question is presented in different forms, by challenge to the array of jurors, by demurrer to the indictment, by

plea to the jurisdiction, and motion in arrest of judgment, after all, the only question for consideration is that of the jurisdiction of the circuit court of the United States being held in one of the subdivisions or districts in South Carolina to try a criminal offense alleged to have been committed in the other subdivision or district of the said State.

POINTS AND ARGUMENT.

The statute relied upon by the plaintiff in error to sustain the positions taken in his several exceptions and assignments of error is section 546 of the Revised Statutes of the United States, which reads as follows:

> The State of South Carolina is divided into two districts, which shall be called the eastern and western districts of the *district* of South Carolina. The western district includes the counties of Lancaster, Chester, York, Union, Spartanburgh, Greenville, Pendleton, Abbeville, Edgefield, Newberry, Laurens, and Fairfield, as they existed February 21, 1823, The eastern district includes the residue of said State.

By the second section of the act of September 24, 1789, which is an act, according to its caption, "To establish the judicial courts of the United States," the United States was divided into thirteen districts, one of which said districts consists of the State of South Carolina, to be called "South Carolina district." (See 1 U. S. Stats. L., chap. 20, p. 73.)

The third section of said act provides that there shall be a court called a district court in each of said districts

to consist of one judge who shall be called a district judge. Here it may be well to call the attention of the court to the fact that, although it is insisted by the plaintiff in error that there are two judicial districts in the State of South Carolina, there is but one district judge for the State, but one United States marshal, and but one attorney for the United States. The one district judge holds court in both the eastern and western districts of the State. The United States attorney, who is nominated, confirmed, and commissioned for the district of South Carolina, discharges the functions of his office throughout the State, and so does the United States marshal. So, in so far as the appointment of a district judge, a United States attorney, and a United States marshal is concerned, the State of South Carolina has never been treated otherwise than as constituting one judicial district. And it will be observed that in section 546, under which it is claimed that the State of South Carolina is divided into two judicial districts, so that the circuit court in order to have jurisdiction of an offense committed in one of the districts must sit within the limits of that particular district, the language is such as to preserve the original district of South Carolina, for, while the statute provides that the State of South Carolina is divided into two districts, it expressly enacts that the two districts thus made shall be called the "eastern and western districts of the *district* of South Carolina," not the eastern and western districts of the *State* of South Carolina. So in the very language of this statute itself the original judicial district of South Carolina is preserved.

In Notes on the Revised Statutes of the United States, Gould & Tucker, Title XIII, page 65, it is said (Secs. 543, 546):

> The States of North Carolina and South Carolina are here defined as each constituting one judicial district, although the act of 1802 (2 St., 162), ch. 31, § 7, designated the three divisions of North Carolina as "districts," and the act of 1823 (cited § 546) also so designated the divisions of South Carolina. 1 Com. D., 301, 307.

In *Young* v. *Merchants' Insurance Co.* (29 F. R., 237, 275) it was held by Simonton, Cir. J., that—

> All parts of the State of South Carolina are within the jurisdiction of this court. Its process runs all through the State. It does not know, in the sense which affects its jurisdiction, either the eastern or western district.

And whilst the point was not directly presented in the case of *Post* v. *The United States* (161 U. S., 583), yet the decision in that case tends to support the view that the State of South Carolina, notwithstanding the division made by section 546 of the Revised Statutes, is still, in so far as the circuit court of the United States is concerned, one judicial district, and has jurisdiction of criminal causes arising in any part of the State duly cognizable in the circuit court of the said district of South Carolina. The question involved in Post's case arose under the act of July 12, 1894, chapter 132, which provided—

> That all criminal proceedings instituted for the trial of offenses against the laws of the United States, arising in the district of Minnesota, shall be

> brought, had, and prosecuted in the division of said district in which such offenses were committed.

So it appears to have been necessary, in the opinion of Congress, in order to confine the jurisdiction to try a criminal offense to a particular division of the district of Minnesota, to pass a special act for that purpose. Otherwise, it seems to be a tenable proposition that the jurisdiction would have extended to the entire district of Minnesota. There has been no special act of Congress conferring exclusive jurisdiction of criminal offenses in South Carolina to the districts provided by section 546, and therefore, following upon the line of argument, it is insisted that this mere division by virtue of section 546, which left the original district of South Carolina intact so far as the jurisdiction of the circuit court is concerned, did not oust the jurisdiction of the circuit court to hear and determine a criminal offense committed in any part of the State of South Carolina, although the alleged offense may have been committed in one of the newly created districts and the court sit in the other.

The case of *Logan* v. *The United States* (144 U. S., 263) is also cited. It is held in that case that—

> An act of Congress requiring courts to be held at three places in a judicial district, and prosecutions for offenses committed in certain counties to be tried, and writs and recognizances to be returned, at each place, does not affect the power of the grand jury sitting at either place to present indictments for offenses committed anywhere within the district.

It is decided also in this case that the finding of the indictment is no part of the trial, and if it should be

held that the circuit court, sitting in the eastern district, had no jurisdiction to try the case against Barrett, still, under this decision, the jurisdiction existed for the grand jury to pass upon the bill of indictment, and in this view of it, the second case, No. 175, having been remitted after the finding of the indictment by the circuit court at Columbia, to be tried at Greenville, in the western district, in which the offense was alleged to have been committed, would fulfill all the requirements of the law. But this view of it is not acquiesced in by any means; it is only suggested for the sake of the argument.

The attention of the court is also directed to section 658, chapter 8, of the Revised Statutes of the United States, establishing the regular terms of the circuit courts of the United States. This section provides that—

> The regular terms of the circuit courts shall be held in each year at the times and places following; * * * in the *district* of *South Carolina*, at Charleston, on the first Monday in April, and at Columbia on the fourth Monday in November.

It will be observed that this statute does not provide for the sitting of the circuit court of the United States for the district of South Carolina at any place in the western district, the two places designated for the holding of the regular terms of the circuit court of the United States for the district of South Carolina being Charleston and Columbia, both of which are in the eastern district. So, if we take the construction which is attempted to be placed upon these statutes by the plaintiff in error, there would be no circuit court with the jurisdiction vested in it by law for the western district of South Carolina. In

other words, if the circuit court, in order to have jurisdiction of an offense committed in the western district, must be actually held at some place within the western district, then, under the provision of law for the holding of the regular terms of the circuit court in South Carolina, there would be no circuit-court jurisdiction for criminal offenses in the western district.

And the act of April 26, 1890, chapter 165, p. 718, Supplement Revised Statutes of the United States, vol. 1, second edition, provides—

> That there shall be four regular terms of the circuit court of the United States for the *district of South Carolina* in each year, as follows: * * * and in the city of Columbia on the fourth Monday in November.

It will be seen from these statutes that the State of South Carolina has never been considered or dealt with by Congress otherwise than as one district.

Chapter 7, Circuit Court Jurisdiction, section 629, Revised Statutes of the United States, provides that the circuit court shall have (subdivision 20)—

> Exclusive cognizance of all crimes and offenses cognizable under the authority of the United States, except where it is or may be otherwise provided by law, and concurrent jurisdiction with the district courts of crimes and offenses cognizable therein.

So the circuit court for the district of South Carolina had exclusive cognizance of the crimes for which Barrett was indicted and tried, except where it is otherwise provided by law. The provision otherwise by law in cases like these under consideration is in the statute conferring

jurisdiction upon the district courts in the several districts concurrent with that of the circuit court. This provision takes away the exclusive jurisdiction, but still leaves the circuit courts of the United States with jurisdiction concurrent with the district courts of all crimes and offenses cognizable under the authority of the United States. There is no law that divests the circuit court of the United States for the district of South Carolina of this jurisdiction thus conferred.

The Constitution of the United States, Article III, subdivision 3, provides that trials for crime shall be by jury and such trials shall be held in the *State* where said crimes shall have been committed. Barrett had the full benefit of that provision of the Constitution in this case. He was tried by jury and in the State of South Carolina, where the crime was alleged to have been committed.

But it is insisted further that, under Article VI of the amendments to the Constitution, the trial should have taken place in the *district* also in which the crime was committed. This last-mentioned article provides for trial in a criminal prosecution by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. Every requirement of this constitutional provision was fulfilled in Barrett's case. There is no intimation that the jury was not impartial. The record shows that it was drawn from the State of South Carolina, the State in which the crime was alleged to have been committed, and that the trial was had in the district of South Carolina, which is composed of the State of South Carolina, which had been previously ascertained by law.

The plaintiff in error, in the first point in his brief of argument, says that—

> Both indictments were found at a circuit court for the eastern district of South Carolina, which convened at Columbia, in the county of Richland, in the State of South Carolina, on the fourth Monday in November, 1894.

This is a misstatement of the fact, as fully appears by the record. The term of court at which the bills of indictment were found was not a circuit court for the eastern district of South Carolina, but *the circuit court of the United States for the district of South Carolina*. Every proceeding in No. 53 is recorded as in *the circuit court of the United States for the district of South Carolina*, and every proceeding in No. 175 is similarly recorded until it was remitted to the district court for the western district by order of the circuit judge. There is nowhere in the proceedings in either case any recognition of two districts in South Carolina, except the order remitting No. 175 to the district court of the western district. The doctrine in *Toland* v. *Sprague*, 12 Pet. (U. S.), cited in brief of plaintiff in error, sustains the position contended for on the part of the United States. In that case it is in substance decided that the jurisdiction of a circuit court of the United States is coextensive with the limits of the district in which it is held, and the same principle is declared in the case of *Railroad Company* v. *Railroad Company*, 15 How. (U. S.), also cited by the plaintiff in error.

It seems to be a necessary conclusion that it was not intended by Congress by the provisions of section 546

of the Revised Statutes to destroy the existence of the original judicial district of South Carolina, and that the said section was intended to establish the districts referred to simply as subdivisions of the district of South Carolina, leaving the said district with the jurisdiction of the circuit court of the United States therein unimpaired.

There are certain conditions relating to this question of which it is assumed the court here will take judicial notice, such as the fact that a district judge is appointed and commissioned for the district of South Carolina; a United States attorney is appointed and commissioned for the district of South Carolina, and a United States marshal is appointed and commissioned for the same district. The district judge holds court in all parts of the State, and the functions of the district attorney and marshal in the discharge of their official duty extend throughout the State of South Carolina as one judicial district. The process of the circuit court, such as writs of subpœna, summonses, citations, and monitions in civil actions, and capiases, subpœnas for witnesses, and other process in criminal actions, together with orders for venires and for jurors, are operative, when regularly issued, in all parts of the State of South Carolina as one judicial district.

RECAPITULATION.

First. The original act establishing thirteen judicial districts in the United States constituted one district in the State of South Carolina.

Second. Section 546 does not destroy the original district as thus constituted, but expressly recognizes such

district, and has the effect only to subdivide the same into divisions and not into separate judicial districts, at least to the extent of destroying the original district and the jurisdiction of the circuit courts of the United States therein.

Third. The acts of Congress before referred to, in regard to the terms of the circuit court, expressly recognize the State of South Carolina as one judicial district.

Fourth. Authority to appoint and commission a United States judge, a United States attorney, and a United States marshal for the district of South Carolina is a further recognition of the existence of said district.

Fifth. The jurisdiction of the circuit court of the United States for the district of South Carolina to issue and command the service of process in all parts of the State of South Carolina has, so far as can be ascertained, never been disputed, but, on the other hand, has uniformly been accepted as authorized by law.

JAS. E. BOYD,
Assistant Attorney-General.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

Nos. 53 and 175 (Consolidated).

CHAS. P. BARRETT, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

In Error to the Circuit and District Courts of the United States for the Districts of South Carolina.

PETITION AND BRIEF FOR REHEARING.

CHARLES C LANCASTER,
A. H. GARLAND,
JOHN L. McLAURIN.

LAW REPORTER PRINT

IN THE

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STATEMENT.

Barrett was convicted of infamous offenses in two separate cases in the United States courts in South Carolina and sentenced, in the aggregate, to three years imprisonment and fines in the sum of $4,500, and prosecuted writs of error to the Supreme Court. They are Nos. 53 and 175 on the calendar for the October term, 1897.

The only legal questions presented by the record necessary for the purposes of this proceeding are as follows:

1. Does South Carolina constitute *two districts*, or only *one district*, containing *two divisions?*

2. Should the trial courts have compelled the Govern-

ment to elect on which one of the offenses it would rely for a conviction?

3. Should the record have shown affirmatively that a grand jury of not less than twelve, nor more than twenty-three men found the indictments?

They were argued together as one case just prior to the February recess—January 21, 1898—Mr. Justice McKenna only being absent. On reassembling after the recess—February 21, 1898—the court, speaking by Mr. Chief Justice Fuller, overruled all the objections, holding in substance—

1. That South Carolina constitutes "but *one district*, containing *two divisions*."

2. That the bill of exceptions does not contain the evidence and, therefore, the error imputed to the trial court in refusing to compel the election on the part of the Government could not be considered.

No mention was made of the question whether it was essential that the record should show that a grand jury of not less than twelve, nor more than twenty-three men found the indictment.

Judgments of affirmance were, therefore, entered in both cases and this petition for a rehearing is the consequence.

In this connection it may not be improper to observe that the petitioner is not unmindful of the wise and salutary rule that only in rare instances will a rehearing be granted in any case. But in the dim, distant past, this court, not arrogating to itself that impossible human attainment of infallibility, but, on the contrary, recognizing its capacity to err, made ample provision for correcting its own mistakes, from whatsoever cause committed, which has again and again been readopted and constitutes No. 30 of the present rules. But while this right will be cautiously, not to say sparingly, exercised, yet when a proper case is presented, this court will review its own decisions with as little hesitation as it will those of inferior courts over which it has appellate jurisdiction.

PETITION FOR REHEARING.

To the Honorable the Supreme Court of the United States:

Chas. P. Barrett, plaintiff in error, prays for a rehearing of the two causes, above entitled, upon the grounds following, to wit:

1. Because mistake of law was committed in holding that by the local statutes relative to the judicial districts in South Carolina that State constitutes "but one district, containing two divisions," statutes and documents having been discovered since the judgments that were not accessible to court or counsel before, which demonstrate that there are two districts.

2. Because mistake of fact was committed by the court in holding that the evidence was not incorporated in the bill of exceptions, and, for that cause, declining to consider the assignment of error based on a refusal of the court below to compel the Government to elect on which one of the offenses it would rely for a conviction—the *facts*, and not the *evidence*, of them, being all that are necessary to be set forth in the exceptions.

3. Because error was committed in overlooking the fact that neither record shows that a grand jury of not less than twelve nor more than twenty-three men found the indictments.

Respectfully submitted.

CHARLES C. LANCASTER,
Counsel for Petitioner.

A. H. GARLAND,
JOHN L. McLAURIN,
Of Counsel.

CERTIFICATE OF COUNSEL.

I certify that, in my opinion, the petition for a rehearing is well founded in law.

CHAS. C. LANCASTER.

BRIEF AND ARGUMENT.

First Point.

South Carolina constitutes TWO DISTRICTS, *and not* ONE DISTRICT *Containing* TWO DIVISIONS.

I.

The point upon which plaintiff in error mainly relied before this court for a reversal of the judgments below was, that, under Article VI of the Constitutional Amendments and Secs. 563, 629 of the Revised Statutes passed in pursuance thereof, the court in the eastern district was without jurisdiction to find the indictments or to try the cases for offenses charged to have been committed in the western district. But this court, while conceding the law to be that an accused person cannot be legally indicted or tried in one district for an offense committed in another, held that South Carolina constitutes "but one *district*, containing two *divisions*." This point was, therefore, overruled and this petition challenges the correctness of that ruling.

"District" and "division" are well-defined terms. Their difference is world-wide. Relative to United States courts, they correspond very nearly with county and township in State courts. Practically, they bear the same relation of county and township, or city and ward. Division, as the name implies, is a *subdivision* of a district.

The words *division* and *district* are not interchangeable terms, you can say, a *division* of a *district*, but you can not say a *district* of a *division*. This is nonsense. A trial in the district where the offense has been committed is a substantial right, which can not be divested without impairing the constitutional safeguard of the citizen.

U. S. *vs.* Dawson, 15 How. 467.

U. S. *vs.* Jackalow, 1 Black. 484.

As before stated, while it is indispensable that one charged with crime must be indicted and tried in the district of its commission, there is no law, constitutional or statutory, requiring the indictment or trial to take place in the *division* of its occurrence. It follows, therefore, that if South Carolina constitutes but one district, containing two divisions, the judgment in this regard is correct; but if, on the other hand, that State composes two districts, the judgment is erroneous, and a rehearing should be awarded, to the end that the mistake be corrected. That they are *districts*, and not *divisions*, will be shown with as near approach to demonstration as anything short of mathematics will admit—if, indeed, it does not amount to actual demonstration itself.

That this court should have committed this mistake, discredits neither the legal ability nor the research of any of its members. Far otherwise. That the ablest jurists can know but little of the great body of the law, all admit. For the same reason that the State bench is not supposed to be familiar with the statutes of other States, or even the local statutes of its own State, without enlightenment from the bar, the Federal bench is not expected to possess intimate knowledge of local United States statutes; especially, as in this case, in the construction of an ambiguous statute enacted three-quarters of a century (February 21, 1823), and re-enacted a quarter of a century (June 22, 1874) ago. Nor, under the circumstances, should the industry and diligence of counsel be discounted for inability to properly advise the court in regard to the matter at the argument, for the information demonstrating that there are two districts has been discovered since the entry of the judgments by, as it would seem, a special Providence. The last will and testament of Chief Justice Chase would never have been adjudged void for having only two witnesses had he been properly advised that the local law of the

District of Columbia, unlike the statutes of Ohio, required three witnesses!

II.

There were two districts in South Carolina from February 21, 1823, down to June 22, 1874, the time of adopting the Revised Statutes.

By the Judiciary Act of September 24, 1789, South Carolina constituted one district. This remained the law till the passage of the Act of February 21, 1823 (3 Stat. 726), entitled, "An act to divide the *State* of South Carolina into two *judicial districts*" (not "geographical divisions"), when it was divided into two districts. The word "division" is nowhe e used, either in the title or body of the act. Since, then, "district" was a word of definite legal import, both by the Judiciary Act and other statutes, as well as by Article VI of the Constitutional Amendments, we are bound to presume, in the absence of a clear expression to the contrary, that it was used in that sense here.

In the very recent case of U. S. *vs.* Goldenberg, 168 U. S. 95, 102, this court, speaking by Mr. Justice Brewer, used this terse and pregnant language:

> "The general and primary rule of statutory construction is that the intent of the lawmaker is to be found in the language that he had used. He is presumed to know the meaning of words. The courts have no function of legislation, and simply seeks to ascertain the will of the legislator. True, there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are urgent reasons for believing that the letter does not fully and accurately disclose the intent."

From this period down to 1858, Congress passed divers acts whose sole object was to regulate the terms of the courts

in South Carolina, but in nowise affecting the districts, in which the words "South Carolina," "State of South Carolina," and "District of South Carolina," are indifferently used relative to the courts in that State. This, no doubt, is due, in part, to the slovenly manner in which legislators too frequently express themselves, but mainly because, since one judge, one district attorney, and one marshal acted as such for both districts, it was popularly supposed that there was but one district there and, in that way, Congress fell into that error. But it was *nowhere enacted* that there should be *but one district*, or that there was any *division*. Hence, it is illogical to conclude that such legislation formed one "district, with two divisions." Laws are made or unmade, not by bare *assumption*, but by *enactment*. Especially in view of the fact that by the Act of August 16, 1856 (11 Stat. 43), the *western district* was vested with circuit court powers. Whoever heard of a separate and distinct circuit court (*eo nomine*) being established in a division—a part— a subdivision—of a district, or a part or division of a district court being given circuit court jurisdiction, which, in law, is the same thing?

Ex parte Ins. Co., 18 Wall. 417.

Such legislation would inevitably establish two or more circuit and district courts in one district—an absurdity unknown to Federal legislation, and one which the courts will never presume Congress to have intended unless forced to do so by clear and unequivocal language—which language is conspicuously absent in this case.

True, opinions, legal and lay, differed respecting the districts and courts in South Carolina, and, while there is no judicial utterance to the effect that there are not two districts in that State, there is a circuit court decision rendered in 1871, in the Ku Klux trials (pp. 8, 9, 10), wherein it is ruled that the circuit court had jurisdiction over the whole

State. The opinion is guarded and carefully avoided holding that there is "but one district, containing two divisions." Besides, the question was not argued by a member of the South Carolina bar, but by a Baltimore lawyer (Reverdy Johnson) and decided by a Baltimore judge (Judge Bond) shortly after his accession to the bench, neither of whom could be expected to be familiar with the long history of the local legislation upon the interpretation of which the decision depended. In addition, at that time there was no writ of error allowed to the Supreme Court in such cases. But this decision was very unsatisfactory to the bar of South Carolina. So much so that shortly thereafter it provoked an elaborate and learned argument from Gen. Edward McCrady, an eminent Charleston (S. C.) lawyer, wherein he not only combats the views of the court in that case, but by a careful review and analysis of the authorities deduces the conclusion that there are two districts in South Carolina. It is published in the appendix to 3 Hughes Reports, 665, to a careful perusal of which this court is earnestly invited.

It is noteworthy that in the whole of the legislation, from the time of the Act of February 21, 1823, down to the adoption of the Revised Statutes, the word "division" in reference to the courts in South Carlina is not used once! It is "district" every time! How strange that this should have occurred, if it had been the intention of Congress to compose divisions instead of districts! Why use district if division is meant? Would it not have been quite as easy to use the proper as the improper word? Again, since division is incontrovertibly merely a subdivision—a part—of a district, the language of the Act of February 21, 1823, both in its title and body, is significant. It is "the *State* of South Carolina is divided into two *districts*," etc., and not the *district* of South Carolina is divided into two *divisions*. as was the case when, by the Act of July 7, 1838 (5 Stat. 295),

the Northern District of New York was divided into three divisions; and by the Act of March 3, 1859 (11 Stat. 437), the district of Iowa was divided into four divisions.

So much for the state of the law in South Carolina in relation to districts and courts at the time of the adoption of the Revised Statutes of the United States—June 22, 1874—from which it would seem that it has been indubitably established that there were then two districts in the State.

III.

The Revised Statutes Re-enacted the previous Legislation Dividing South Carolina into Two Districts.

The decision in this case holding that there is but one district in South Carolina is based on Section 546 of the Revised Statutes, and turned upon the words "of the district" in line 2 thereof. Said Mr. Chief Justice Fuller on page 6 of the opinion:

> "When, then, Congress enacted this section it seems to have construed the Act of 1823, not as dividing the State into two Judicial Districts, as indicated in the title of the act, but into two districts in sense of geographical divisions, which is in harmony with the language used in the body of the act. At all events, the phraseology of Section 546 is only consistent with the conclusion that the State constituted but one Judicial District, containing two divisions, which were 'called the eastern and western districts of the district of South Carolina.'"

But it will now be shown, absolutely and conclusively, by authority of an irrefragable character unattainable before the judgments, that Congress, in adopting the Revised Statutes, not only expressed the belief that two districts then existed in South Carolina and re-enacted such legislation accordingly, but then passed laws to that effect even if there

were not two districts before. And it will be demonstrated that the presence of the phrase "of the district" in line 2 of Section 546, without which it would have been simply impossible for the court to adjudge that South Carolina constituted "but one district, containing two divisions," is the result of a mere inadvertent omission to eliminate the same when amending the commissioner's draft of the revision of the laws in its passage through Congress. If this is satisfactorily shown—and it will be—it goes without saying that it will not only be the duty, but the pleasure, of this court to rectify such error committed because of the unavoidable failure of counsel to procure the authority by which to properly advise it before judgment respecting the interpretation of a local statute. Especially will this be done in a case which not only involves such grave consequences to the plaintiff in error, but practically deprives all the people in South Carolina of the constitutional right of being tried near their homes. To hold that there is but one district when in point of law there are two, practically deprives the citizen of the Constitutional right of being tried in the district wherein the crime is committed as if it should be held that he was not entitled to such right at all.

In view of the gravity of the issue involved, and in order that this error of the court may be revealed in its true light, a somewhat detailed history of the Revised Statutes will now be given: Early in the 39th Congress—December, 1865—Judge L. P. Poland, then a Senator from Vermont, introduced a bill into the Senate looking to a codification of the statutes. It became a law June 27, 1866 (14 Stat. 74), and, in accordance with its terms, three commissioners were appointed to revise the statutes. Finding that the three years allowed by the act in which to complete the work were insufficient, Congress, on May 4, 1870 (16 Stat. 96), revived the former act and gave three additional years in which to finish it.

The commissioners completed their work and laid it before the House Committee on the Revision of the Laws of the 42d Congress, early in the year 1873. It was bound in two volumes and styled "Commissioners Draft of the Revision," abbreviated "Com. D."

While not absolutely clear in their own minds as to whether there were two districts in South Carolina, yet inclining strongly to the opinion that there were not, the commissioners recommended that the State compose "one district, containing two divisions." Accordingly, all the sections on that subject were framed conformably to that idea. Their proposed legislation relative to it is as follows:

"Chap. 1, of Judicial Districts, Vol. 1, page 301."

"Sec. 1. The United States are divided into judicial districts as hereinafter provided.

"Sec. 2. The States of California, Connecticut, Delaware, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Oregon, Rhode Island, *South Carolina*, Vermont, and West Virginia, each, constitute one judicial district." (Note under section 2):

"The States of North Carolina and South Carolina are here defined as constituting, each, one judicial district; notwithstanding the Act of April 20, 1802, designates the three divisions of North Carolina as 'districts,' and the Act of February 21, 1823 (3 Stat. 726), designates the divisions of South Carolina by the same name. The reasons for construing the so-called districts as only trial divisions are given under Sections 14 and 17."

Page 307, Sec. 17. "The *district* of South Carolina is divided into two *divisions*, which shall be called the eastern and western *divisions* of the *district* of South Carolina. The western *division* includes the counties of Lancaster et al., as they existed February

21, 1823. The eastern *division* includes the residue of said State." (Note under Section 17):

The Act of February 21, 1823 (3 Stat. 726), is as follows:

"That the *State* of South Carolina is hereby divided into two *districts* in manner following, that is to say: The districts of Lancaster et al. shall compose one *district* to be called the western *district*; and the residue of the State shall form one other *district* to be called the eastern *district*. And the terms of said district court, for the eastern *district*, shall be held in Charleston, at such times as they are now by law directed to be holden. And for the trial of all such civil and criminal causes as are by law cognizable in the district courts of the United States, which may hereafter arise or be prosecuted, or sued, within the said western *district* there shall be one annual session of the said district court holden at Laurens, to begin on the 2d Monday in May of each year, to be holden by the district judge of the United States of the State of South Carolina; and he is authorized and directed to hold such other special sessions as may be necessary for the dispatch of the causes in the said court, at such times as he may deem expedient, and may adjourn such special sessions to any other time previous to a stated session."

"By the Act of August 16, 1856 (11 Stat. 43), the district court was moved from Laurens to Greenville. And by Section 3 of the same act it is provided: 'That the said district court *for Greenville*, in addition to the ordinary jurisdiction of a district court of the United States, shall have jurisdiction of all causes (except appeals and writs of error) which now are, or may hereafter be, made cognizable in a circuit court of the United States, and shall proceed in the same manner as a circuit court.'"

"When the so-called 'districts' were established no provision was made for an additional judge, district attorney or marshal; and even the act by which they were established designated the term to be held in the western district as a term of the said District Court of South Carolina. The division, there-

fore, seems to have resembled the arrangement afterward adopted for Iowa.

"On the other hand, it is true, the grant of circuit court powers to the district court sitting in Greenville seems to give that division the character of a district, within and for which the district court is authorized to act as a circuit court. The arrangement is anomalous, and it has been deemed most convenient to preserve the designation of district of South Carolina, and to define the so-called districts as divisions."

"Chap. 4, District Court, page 307."

"Sec. 44. District courts shall be held as follows:

"In the eastern *division* of the *district* of South Carolina, at Charleston, on the first Monday in January &c.

"In the western *division* of said district, at Greenville on the first Monday in August."

"Chap. 15, of Juries, page 459."

"Sec. 281. The grand and petit jurors for the district court sitting in the western *division* of South Carolina shall be drawn from the inhabitants of said *division* who are liable, according to the laws of said State to do jury duty in the courts thereof, &c., &c."

No words in the English language could make it plainer that it was the intention of the commissioners to have "one district, with two divisions;" and had Congress seen fit to adopt their recommendation in that regard—which that body carefully and studiously refused to do—instead of constituting two districts—which it unquestionably did—it is passing strange that, in its passage through Congress, that body did not use that clear and unequivocal language instead of making such radical changes in the phraseology! Would Congress have stricken out the word "division" and inserted "district," and in divers sections at that, if it had

meant "division"? This is what was done, as will be shown presently.

Recognizing the chances for the commissioners to have committed numerous errors in the performance of such a herculean task, especially as they were empowered to change the law, out of abundant caution, a joint resolution was passed on the last day of the last session of the 42d Congress, March 3, 1873 (17 Stat. 579), authorizing the appointment of a joint committee, consisting of the Committee on Revision of the Laws of the House and Senate of that Congress, whose duty it should be to employ a lawyer, who, under their supervision and regulations, should revise the commissioners' draft and prepare it in the form of a bill to be introduced on the first day of the first session of the 43d Congress, December 1, 1873. This joint committee employed Thomas J. Durant, an eminent Washington City counsellor, and directed him, apart from the other duties enumerated, to restore the law in every instance where the commissioner's draft had changed it, whether that alteration was the result of mistake, or in consequence of the power with which they had been invested to amend it. Mr. Durant entered upon his duties in March, 1873, and completed it in October of the same year. On October 20 the joint committee held a meeting in conjunction with Mr. Durant, and the revision was finished, put in the form of a bill, printed and introduced into the House on December 10, 1873 (Cong. Rec. 43d Congress, Vol. 2, p. 129). Able lawyers composed that committee, among the number, B. F. Butler, chairman of the House committee; L. P. Poland, the author of the original bill in the Senate, who, in the meantime, had become a member of the House; and Roscoe Conkling chairman of the Senate committee. As stated, this second revision was the product of Thomas J. Durant, supervised and aided by the committees of the two Houses of Congress on the Revision of the Laws. It may, therefore,

be assumed that this work was ably and faithfully done, and it may be added, its leading feature was to make the revision an exact reflex of the then-existing statute laws of the United States—nothing added, nothing omitted.

All the sections of the Commissioner's Draft forming South Carolina "one district, containing two divisons," hereinbefore referred to and copied, were completely changed by this Durant revision so as to constitute the State *two districts*; and whoever entertains a vestige of a doubt respecting this important change having been wrought, after a critical examination of the methods by which it was accomplished, all of which will be minutely detailed below, is possessed of far more skepticism than was ever attributed to that arch-doubter, the Apostle Thomas.

No less fortunately for the plaintiff in error than for the members of this court, individually and collectively—for this august tribunal can as ill afford to render a judgment not in accordance with law as he can to have it done—the original manuscript revision of Mr. Durant correcting the errors of the commissioner's draft, wherein it is shown exactly what alterations were intended to be made and actually were made, is still in existence; and what is far more fortunate still, it reveals beyond a shade of a doubt that the commissioner's draft which *formed* South Carolina into "one district, containing two divisions," was thereby *transformed* into *two districts*, and separate and distinct in the sense in which the word "district" is used in the VI Amendment to the Constitution.

This manuscript revision is in (8) eight immense volumes and is now in the Law Library in the National Capitol. Mr. Durant and his co-adjutors (joint committees of the Senate and House on the Revision of Laws) went at it in a practical, common sense manner by simply cutting out leaf by leaf of the commissioner's draft, making such alterations thereon as were necessary to make it conform to their views,

and then pasting each leaf, as altered, in a large blank book, using only one side of a leaf to each page of the volume in which it was pasted. As stated, it is contained in eight (8) large volumes. The manuscript changes are in the handwriting of Mr. Durant himself.

The sections of the commissioner's draft, and the corresponding sections of the Durant manuscript revision, relative to the Districts in South Carolina, will now be placed in juxtaposition, with the erasures and interlineations marked in the latter precisely as they occur in the original.

The first section is an enumeration of the States of the Union which compose only one district. In the commissioner's draft, South Carolina is put in the list which forms one district, but in the Durant Revision it is erased—thus clearly showing that, in the former, South Carolina constituted one district, while in the latter it forms more than one.

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"The third section of the act authorized you to contract with some suitable person to prepare, under your supervision and under such regulations as you might prescribe, the revision of the statutes then already reported by the Commissioners, or which might by them be thereafter reported before the 4th day of May, 1873; and it was directed that such preparation should be embodied in the form of a bill, to be presented at the opening of Congress in December, 1873, all the laws so revised, with a proper index, so that the same might be in form to be acted upon forthwith by Congress at this session.

"The undersigned having had the honor to be selected by you to perform the work indicated in the act, has to the best of his knowledge and ability executed the task, and lays before you the result.

. . . . . .

"The titles and chapters reported by the Commissioners have been in most instances retained, but the numeration of the sections has been changed and made continuous throughout the preparation.

"*Every section reported by the Commissioners has been compared with the text of the corresponding act or portion of the act of Congress referred to, and wherever it has been found that a section contained any departure from the meaning of Congress as expressed in the Statutes at Large, such change has been made as was necessary to restore the original signification.*"

. . . . . .

"Respectfully submitted.

THOMAS J. DURANT.

Since it could serve no useful purpose for Mr. Durant in his report to specifically enumerate all of the multitudinous changes in the Commissioners' Draft which his nine months' incessant labor found to be necessary—largely augmented by reason of his being instructed to restore the law in every case, where the Commissioners, in the exercise of the power with which they had been clothed had altered it, as

well as where they had committed error—he did not mention exceeding a tithe of them. This is apparent, not only from a comparison of the report with the Manuscript Revision, but the report itself clearly says that *some* only of the changes were deemed material to be stated. It is obvious that Mr. Durant did not specify any changes, save where it might be questioned whether he or the Commissioners had mistaken the law; or, it may be, in cases where they were not of minor or local importance, or where the Manuscript Revision ~~should~~ unmistakably show on its face what changes had been wrought. Therefore, the report in question was, of course, silent as to South Carolina courts and districts—there being no need for it.

Says Judge L. P. Poland, the author of the bill to revise the statutes, and its chaperone through all its stages till its passage, in a speech in Congress on January 21, 1874 (Cong. Rec. of 43d Congress, Vol. 2, p. 819):

> "The Commissioners were authorized to make changes to a certain extent, for the purpose of harmonizing the statutes, of which liberty they availed themselves to some extent. . . .
>
> "When the Committee on Revision came to examine the work they became satisfied that it was utterly impossible to carry the work through Congress if it was understood that any changes had been made. Hence, under a special act passed at the last day of the last Congress the Committee on Revision of the Laws, under authority of that act, employed Mr. Durant, a lawyer of this city, to take this work and go over it and expunge from it everything in the nature of a change; anything that altered the law in any particular from what it stood upon the statute book. Mr. Durant went over the work for that purpose and also arranged it in form to be presented as a bill before the House.
>
> . . . . . .
>
> "It shows what he did in carrying out the instructions of the committee in divesting the work of any change.

> "As I said, the committee concluded that it would be impossible to carry the bill through if any change was put in it. By the aid of Mr. Durant, and our own efforts in examining it, we have made it as perfect reflex of the Statutes as it was possible to do."

Durant's manuscript revision was printed and bound, put in the shape of a bill by its author, and introduced into the House, on December 10, 1873, by B. F. Butler, Chairman of the Committee on Revision of the Laws (Cong. Rec., 43d Congress, Vol. 2, p. 129), and was passed as the Revised Statutes. The original Durant Revision, a bound printed copy, and his report accompanying the same, have only recently been discovered—since the judgments on February 21, 1898—and have been removed into the Law Library. A comparison of the sections with the corresponding sections of the Revised Statutes, so far as concerns the districts in South Carolina, will show that they are exactly identical. So, it necessarily follows that if Mr. Durant, in his revision, changed the Commissioner's Draft from "one district, with two divisions," to *two districts*, Congress adopted it in the Revised Statutes.

Following is a table showing the sections of the Durant Revision which correspond with those in the Revised Statutes, relative to the districts in South Carolina:

Sec.	534,	Durant's	Rev.,	corresponds	with	Sec.	531, R. S.
"	549,	"	"	"	"	"	546, "
"	575,	"	"	"	"	"	572, "
"	770,	"	"	"	"	"	767, "
"	779,	"	"	"	"	"	776, "
"	820,	"	"	"	"	"	817, "

The Durant Revision received careful consideration in its passage through Congress. It was introduced on December 10, 1873, and referred to the Committee on Revision of the Laws. That committee parcelled it out among its members; made each committeeman a committee of one on certain

parts of it; then considered each committeeman's work, and then reported the bill to the House. In its passage through that body divers amendments were made—but only to make it conform to the then existing law—but no change was made, or even suggested, in regard to the districts in South Carolina. This the Congressional Record, as well as the fact that the Durant Revision and the Revised Statutes are the same, clearly show. The bill was No. 1215, and here are the exact pages of the Congressional Record of the 43d Congress, wherein it was considered: Pages 129, 646–650, 819–829, 849–858, 995–1001, 1027–1031, 1206–12, 1249–54, 1414–17, 1460–62, 1611–20, 1657–62, 1789–95, 1819–25, 1968–76, 2005–55, 2709–14. The bill passed the Senate without amendment and was approved June 22, 1874.

The Commissioner's draft formed South Carolina "one district containing two divisions." This is sure. The Durant revision, as appears both by the manuscript and the printed copy (and they are identical, of course,), changed it to *two districts.* This is equally sure. Now, whose views of the law did Congress adopt when the matter came before that body? The Record must settle the question. Compare the sections in the above table and it will appear that the Revised Statutes are a literal transcript of the Durant Revision—every word, syllable, letter and punctuation mark! The conclusion, therefore, follows "as sure as the night the day,"—and there is no avenue of escape from it—that there are *two districts* in South Carolina!

Sections 551, 552, Revised Statutes, shed light on this subject. The first says that there shall be a district judge in each district, save in the cases in Section 552. The latter declares that one district judge shall be appointed for South Carolina. who shall be judge for "each district" in that State. This is a clear recognition of *two districts* in the State, for, if they were "divisions" the matter would not have been mentioned at all; or, if it had been, they would have been called "divisions." These sections, as well as Sections 767, 776, relative

to district attorneys and marshals in South Carolina, are merely a re-enactment of what was clearly implied in the Act of February 21, 1823 (3 Stat. 726), dividing South Carolina into two districts, making one judge, one district attorney and one marshal, act for both districts.

Section 571, Revised Statutes, clearly recognizes two districts by vesting the district court in the *western district* with circuit court jurisdiction. This is the bringing forward of a part of the Act of August 16, 1856 (11 Stat. 43), which first gave the district court in that district circuit court powers.

Before the adoption of the Revised Statutes it seems to have been regarded that there were two districts in South Carolina, but that the circuit court jurisdiction extended over both. Mr. Conkling's Treatise so regarded it, owing to the failure of the Act of February 21, 1823, which divided the State into two districts, to provide circuit court terms. Such was the theory of Circuit Judge Bond in the South Carolina Ku Klux trials, in 1871, which was before the adoption of the Revised Statutes. But even if the circuit court did have jurisdiction over both districts, the trial and all its incidents—indictment, jurors, &c., &c.,—must needs have occurred in the district where the offense was committed. This, by Art. VI of the Constitutional Amendments, But this question loses its practical importance for, by Section 608, Revised Statutes, there was created a circuit court in each of the districts in South Carolina.

The circuit court decisions (United States *vs.* Butler, 1 Hughes, 457; and Young *vs.* Ins. Co., 29 Fed. Rep. 273) rendered since the adoption of the Revised Statutes, simply followed the decision in the Ku Klux trials, which was rendered before, and seemed to overlook the provisions of the Revised Statutes on that subject. But whether those decisions were correct or incorrect, either by the law before or after the adoption of the Revised Statutes, an act has been passed by Congress since their rendition (February 6, 1889), which clearly established a circuit court, *eo nomine*,

in the western district, even if it had not been done before, which necessitated the indictments and trials in these cases to have occurred there. But this matter will be noticed later on.

The word "division" is no where used in the Revised Statutes with reference to South Carolina. "District" is used every time. This is significant, especially in view of the fact that, in regard to the district of Iowa, which was divided into two divisions, the word "division" is used (Sec. 537, Rev. Stat.). The reason is obvious—that Congress intended to constitute "districts" in South Carolina, and "divisions" in Iowa.

So much for the law as to the districts in South Carolina by the Revised Statutes. It now remains to be seen whether Congress has changed it since by merging the two districts into one.

IV.

The legislation since the adoption of the Revised Statutes recognizes the two districts in South Carolina.

The first statute on the subject is the Act of January 31, 1877, (19 Stat. 230), amending Sec. 571, Rev. Stats., which vested the district court for the western district with circuit court powers. The act in question recognizes the Western district of South Carolina and a district court therein with circuit court jurisdiction. The word "district," not "division," is used.

The next act on the subject is that of February 6, 1889 (25 Stat. 655), which not only recognizes the western district by abolishing circuit court jurisdiction, but establishes a circuit court, *eo nomine*, therein. This statute is a well-considered one. The territorial limits of the court are defined —coextensive and coterminous with the western district, of course. Provision is made for the transfer of the records and pending causes of the then abolished district court with

circuit court powers, to the then established circuit court. A clerk for the newly-created circuit court is required to be appointed. Time and place are arranged for holding its terms—the same as then fixed for the district court. The district attorney and marshal of the districts are directed to act as such for the circuit court. This is a very cautious act—it takes nothing for granted. Some of its provisions would have been implied; and while the circuit court already existed in that district by virtue of Sec. 608, Rev. Stat., but no sessions had been arranged, because there was no necessity for it, since a district court with circuit court powers is, in law, though not in name, a circuit court—out of abundant caution the circuit court was created as well as terms provided for. All this goes to show that it was clearly the intention of Congress to have two districts in South Carolina—the eastern and western—with a district and circuit court in each. The act is as follows:

> "An act to abolish circuit court powers of certain district courts . . . and for other purposes."
>
> "Section 1. That there is hereby established a circuit court in and for the Western District of Arkansas, for the Northern District of Mississippi, *and for the Western District of South Carolina*, as the said district courts are now constituted by law. And the terms of said circuit courts, respectively, shall be held at the times and places now provided by law for the holding of the district courts in said district, respectively.
>
> "Sec. 2. That said circuit courts shall have and exercise, within their respective districts, the same original and appellate jurisdiction as is or may be conferred by law upon the other circuit courts of the United States; and all suits now pending in the said district courts in which the said district courts exercise circuit court powers shall be transferred to said circuit courts, and shall be proceeded with accordingly.
>
> "Sec. 3. That there shall be appointed for each of

said circuit courts by the circuit judge of the circuit in which said districts are embraced a clerk, who shall take the oath and give the bond required by law for clerks of circuit courts, &c., &c. And the marshals and district attorneys for said districts shall discharge the duties in said circuit courts.

"Sec. 4. That said circuit courts shall have power to make such orders and directions as shall be proper for the transfer from said district courts of all causes, records, &c., &c., as by force of this act should belong to said circuit courts."

Sec. 5 repeals Sec. 571, Revised Statutes, as amended by the Act of January 31, 1877, which confers on said district courts circuit court powers. It also repeals all inconsistent statutes.

Approved February 6, 1889.

So that, whatever doubts may have existed prior to this act relative to the districts and courts in South Carolina, there can be no question but what this statute clearly established—even if it had not been done before, which it had—the western district of South Carolina, with well defined limits, with both a district and a circuit court therein. Spartanburg County is in that district (Sec. 546, Rev. Stat.) and before a person charged with crime in that county (as the indictments charge in these cases), can be indicted or tried elsewhere than in that district, it must clearly appear by express legislation, and not by mere infer ences, that the western district has been abolished. And right here it is proper to remark that this act effectually disposes of the three circuit court decisions alluded to in the opinion of Chief Justice Fuller (Ku Klux cases, decided in 1871; U. S. *vs.* Butler, 1 Hughes, 457, decided in 1877; and Young *vs.* Ins. Co., 29 Fed. Rep 273, decided in 1886), for they were all rendered before the enactment of the statute.

The next act on the subject is that of April 26, 1890 (26 Stat. 71), which, as indicated by both its title and its body, has for its object the fixing of the terms of the courts, and

with no view of interfering with the districts in that State.

Since this statute was discussed orally at the bar and by the briefs of counsel during the argument of these cases on January 21, 1898 (see brief of plaintiff in error, pp. 17–19), it will receive only a passing notice. It has never been and cannot be, seriously contended that its provisions are, *per se*, sufficient to repeal the provisions of law creating two districts in South Carolina with a district and circuit court in each—assuming those conditions to exist. Of course not. In the first place, it is difficult to conceive of any reason why Congress should inaugurate a retrograde movement and repeal a law so beneficial to the citizen in giving him a trial near his home in both civil and criminal cases, by abolishing the two districts and merging them into one. Reforms go not backward. And it is passing strange that the evidence of such a radical change of the law should stand on no surer foundation than presumption, implication or inference. There is no express repeal. If a repeal at all, it is only by implication—a method of repeal abhorrent to the courts. If such an important change had been intended, especially so soon after the Act of February 6, 1889, clearly and fully reaffirming the existence of two districts in the State, would not express words of repeal have been used?

True, the act in question does, in its title, *assume* that there is only one district in the State. But the title is no part of a statute. And Sections 1 and 2 of the act also *assume* the existence of but one district. But laws are made or unmade, especially the latter, not by *assumption*, but by *enactment*. And this *assumption* in Sections 1 and 2 that there is but *one district* is completely negatived by the *assumption* in Sections 3 and 4 that there are *two districts*—the eastern and western. The only thing that can be claimed for the act is that, assuming that, by previous statutes, there was but one district, there is not enough in it to change the law and constitute it two districts. Such seems to have

been the views of Chief Justice Fuller in commenting upon it. This contention is correct. And, in like manner, assuming that, at that time, there were two districts, there is not sufficient in the statute to abolish the two districts and merge them into one.

But the act in question was expressly construed in an official opinion by Attorney General Harmon in a letter addressed to Congressman, now Senator, McLaurin, of South Carolina, on February 29, 1896, wherein he expressly holds that it did not change the law which divided the State into two districts. This letter is published in full in the Congressional Record of March 4, 1896 (p. 2450), and also in the br ef of plaintiff in error on page 19, as well as *infra*, p. 34.

The act shows on its face that it was clumsily drawn by a person of confused ideas in relation to the districts in South Carolina, and manifests no intention to change the law with regard thereto—only to regulate the sittings of the courts.

Another principle of construction is conclusive of this matter, which is that the positive provisions of a statute can not be restrained by inference. Said Mr. Justice Brewer in Rosencrans *vs.* U. S., 165 U. S. 263:

> "When there are statutes clearly defining the jurisdiction of the courts, the force and effect of such provisions should not be disturbed by a mere implication flowing from subsequent legislation. In other words, when Congress has expressly legislated in respect to a given matter, that express legislation must control in the absence of subsequent legislation equally express and will not be overthrown by any mere inferences or implications to be found in such subsequent legislation."

While not of absolutely controlling importance, yet a circumstance entitled to great weight, is the fact that, on the self-same day of the passage of this act—April 26,

1890—two statutes were enacted dividing two other districts of the United States into divisions. The district of North Dakota was divided into four divisions (26 Stat. 67), and the district of Minnesota into six (26 Stat. 72). It follows, therefore, that the attention of Congress was at that very time directed to that very subject—districts and divisions—and, hence, the use of the word "district" could not have been accidentally or carelessly used in the act in question when "division" was intended. Under these circumstances, had Congress designed the merger of the two districts into "one district, containing two divisions," how natural and how easy it would have been to have so declared! And as that body did not say so, the conclusion is irresistible that such intention was foreign to its purpose!

Besides, the theory that this act abolishes the two districts and merges them into one is repugnant to the course of subsequent legislation, which, by a familiar canon, is at war with such construction, as will subsequently clearly appear. Legislative interpretation of a doubtful statute is good.

Sutherland on Stat., Sec. 311.

Black on Stat., 223; 19 Wall. 339.

The next statute on this subject is the one enacted July 23, 1892 (26 Stat. 261), which, both in its title and body, in express terms, recognizes the "eastern *district* of South Carolina," in providing for a May term of the district court for that *district*. If there is an *eastern district*, it necessarily follows that there is a *western district* also. This is practically an amendment of the Act of April 26, 1890 (26 Stat. 71), and hence, a legislative exposition of the latter, which altered the time of holding the spring term of the district court for that district from May to April. This act of 1892 changes the time back to May. There is nothing in this act which, directly or indirectly, indicates that the word "district" was meant to be used for "division." A statute is its own best expositor and words are construed according

to their known signification unless the context shows that they were used in a different sense.

The next statute on the subject is that of May 28, 1896 (29 Stat., pp. 180, 182), where the method of compensating district attorneys and marshals by fees was changed to salaries, which was engrafted upon the legislative appro, priation act, and is as follows:

> "The district attorney for the eastern and western district of the district of South Carolina, $4,500; $2,500 of which shall be for the performance of the duties of the western district" (p. 180);

and, *mutatis mutandis*, the same language is used relative to the emoluments of the marshal (p. 182). Standing alone, and read superficially, without the aid of the other language in the sections where they occur, and by one unfamiliar with its legislative history, especially before the calcium light had been turned on and disclosed that the phrase "of the district," in Sec. 546, was a mere clerical error, to be rejected as surplusage, this act might, with some plausibility, be argued as a kind of legislative recognition that the subdivisions are mere *divisions*, and not *districts*. Chief Justice Fuller simply mentioned the act without commenting thereon. It will now be critically examined and conclusively shown that it not only does not tend to support the theory that they are *divisions*, but that they are *districts*

The committee reported the bill to the House on March 4, 1896 (see Cong. Rec., 54th Congress, p. 2445). Section 1 abolishes the fee system and puts district attorneys and marshals on salaries. Section 2 takes up the States in alphabetical order, beginning at Alabama, provides what salaries the district attorneys shall receive, and goes down the list till South Carolina is reached. It assumes that it composes but one district. Here is the exact language:

> "The district attorneys for each of the following districts shall be paid annual salaries as follows:
>
> . . . . . .
>
> "For the district of South Carolina, $4,500."

The committee were misled in the matter by the Department of Justice, which, in making its report concerning the then incomes of the various district attorneys so as to give the committee the data whereby to regulate the salaries of these officials, treated South Carolina as one district. This error crept into the department on account of there being but one judge (Sec. 552, Rev. Stat.), one district attorney (Sec. 767, Rev. Stat), and one marshal (Sec. 776, Rev. Stat.). for the two districts in South Carolina, and in consequence, they came to regard it as only one district instead of two.

And right here it will be stated that, had it been the design of Congress to recognize "but one district, containing two divisions," the language used by the committee could not have been improved upon, and, hence, no amendment would have been offered even, much less adopted—as was done—affirming the existence of two districts, for, not only is there no necessity for Congress, when regulating the salary of a district attorney in a district, containing more divisions than one, to allude to the several divisions, but it is not the custom so to do (see section 2 of this act, p. 180). where the word "division" is not used once in arranging the salaries for the several districts which do contain more than one division).

During the consideration of the section in question, when South Carolina was reached (Cong. Rec., 54th Congress, March 4, 1896, page 2450) Representative, now Senator, McLaurin, formerly attorney general of that State, moved to amend that part of it so as to read:

> "for the eastern district of South Carolina, $2,000;
> for the western district of South Carolina, $2,500."

This amendment was offered for the evident purpose of preventing Congress from being committed to the theory of one district, and in order to have the recognition of two districts, since, as the proceedings show, a bill was then pending in both Houses for the appointment of a district

attorney and marshal for the western district. It is, therefore, fair to assume that the subject was well considered, and hence, when the conclusion that there were two districts was finally reached, it was the result of mature deliberation. Here follow the proceedings, in part, on Mr. McLaurin's amendment:

> "Mr. MCLAURIN. I offer the amendment which I send to the clerk's desk.
>
> (The amendment was read and was as before stated.)
>
> "Mr. MCLAURIN. As the committee speaks of the 'District of South Carolina,' I wish to correct a mistake. There is no such thing as the 'district of South Carolina,' but the State is divided into an eastern and western district. In the report of the Attorney General a mistake was made in speaking of South Carolina as the 'district of South Carolina.' I have called his attention to it and have his letter which the clerk will please read. I believe the gentleman in charge of the bill has consented to accept my amendment. The letter was read by the clerk as follows:
>
> "DEPARTMENT OF JUSTICE,
>
> "WASHINGTON, D. C., February 29, 1896.
>
> "SIR: With reference to the question whether there are two judicial districts in South Carolina or only one, I beg to say that I have caused an examination to be made, with the following result:
>
> "'When the first register of this Department was prepared, in 1888, Mr. Jenks, then Solicitor-General, examined the question, which was brought to his attention by the appointment clerk, and advised that South Carolina be entered therein as a single district, which was done and has been repeated in subsequent issues.
>
> "'I learn further that the question arose at the commencement of President Harrison's term and was considered by Attorney General Miller, but I am unable to find any record of the conclusion he reached, if he reached any. The practice, however,

has grown up of considering the State as a single district in all matters connected with the judicial affairs of that State, including appointments to office. Various acts of Congress refer to the State as a single district, although they also mention it as two districts. For instance, the Act of April 26, 1890 (26 Stat. 71), is entitled "an act to regulate the sitting of the courts of the United States within the district of South Carolina," yet Sections 3 and 4 speak of eastern and western districts. But it is useless to multiply instances. I am unable to find anything in the statutes which affects the provisions of Sections 546 and 767, Revised Statutes, which divide the State into two districts. I think, therefore, that you should call the attention of the Judiciary Committee to this matter and have the bill amended to fit the case.

"'Very respectfully,

"'JUDSON HARMON,

"'*Attorney General.*

"'Hon. JOHN L. MCLAURIN,

"'*House of Representatives.*'"

The matter was discussed at length by Representatives Culberson, Bailey, Henderson, Talbert, Elliott and others, and not only was it not insisted by anyone that the State composed only one district, but it was admitted by them all that there were two districts. Attention of the court is earnestly invited to the proceedings and speeches made upon the subject. This amendment was rejected, not because any one questioned there being two districts, but on account of it being developed that there was a bill pending before each House for the appointment of a district attorney and marshal for the western district, and it was supposed that the adoption of the amendment might have the effect of providing for their appointment. But it was substantially adopted on motion of Representative Bailey the next day (pp. 2494, 2496), in regard to marshals where the word "eastern" was inserted—since the marshal for the eastern district acted as such for the western district and it was

thought that would accomplish the object. So the other section, relative to district attorneys was recurred to and the word "eastern" inserted. In that shape, "for the eastern district of South Carolina, $4,500," the bill was passed as regards both the district attorney and marshal and went to the Senate.

On March 26, 1896 (Cong. Rec., p. 3180), the committee of the Senate reported the bill with amendments increasing the salaries to $5,000, and so as to read, "for the eastern and western districts of South Carolina, $5,000." But, on Senator Tillman's motion, it was so amended as to read as follows:

> "For the eastern district of South Carolina, $5,000, $3,000 of which shall be for the performance of the duties of the western district," and "passed the Senate" (Cong. Rec., p. 3180), in that shape.

On March 27, 1896 (Cong. Rec., p. 3279), it went to the House, where the amendment in that regard was non-concurred in, and then went to a conference committee (March 31, 1896, p. 3299).

The conference report was made April 25 (Cong. Rec., 4422), and an attempt was made by it to have "divisions" of the "district" recognized, but, as will be shown later, it failed. Here is the exact language of the conference report in that regard (Sec. 7):

> "The district attorney for each of the following districts of the United States shall be paid an annual salary, as follows (taking the States in order and going on till South Carolina is reached): For the eastern and western *divisions* of the district of South Carolina, $4,500."

And the conference report was identical in this regard respecting marshals (May 5, pp. 4765–66).

In this shape, the conference report was adopted, but subsequently changed, striking out "divisions" and insert-

ing "districts." (See Cong. Rec., p. 4845 (May 5), where Mr. Bingham made the motion for the purpose and gave the reasons therefor, namely, that there were two "*districts*" in South Carolina and not "*divisions.*") It was adopted and passed precisely as it is in the Revised Statutes, namely:

> "For the eastern and western districts of the district of South Carolina, $4,500, $2,500 of which shall be for the performance of the duties of the western district."

It, therefore, plainly appears that Congress in terms repudiated the theory that the districts in South Carolina are "divisions," but, on the contrary, expressly declared that they are "districts." And the phrase "of the district" which appears in the act in question is the result of a mere inadvertence (clerical error), as it is in Sec. 546, Rev. Stat. Or it may be that, construing these words in Sec. 546 as creating two "districts," and not "divisions," it was a legislative interpretation of them accordingly. At all events, it is manifest that Congress, by that act, recognized two "districts," and not "divisions."

Again, the bare reading of the language of the act clearly shows that two districts were recognized. Why use the words "for the eastern and western districts" if Congress thought they were "divisions"? Why change the report of the committee "for the district of South Carolina"? Such course was not pursued in the divers other districts in the United States that are divided into divisions. The act clearly shows this. And why add the words "$2,500 of which shall be for the performance of the duties of the western district"? It was not deemed proper to use such words in relation to the three divisions into which the southern district of Georgia is divided, nor, in fact, with reference to the many other divisions in the several districts, as a reference to the act will clearly show.

This embraces the entire legislation on the subject from

the adoption of the Revised Statutes down to the present, and it appears in no statute, not only during that period, but from the time the State was first divided into two districts, February 21, 1823, that the word "division" was ever used in reference to the districts in South Carolina. This is very significant, especially since so many of the districts in the various States are divided into divisions, as will appear by the following table:

Northern district of Alabama has two divisions.
Eastern district of Arkansas has two divisions.
Northern district of Georgia has two divisions.
Southern district of Georgia has three divisions.
Northern district of Illinois has two divisions.
Northern district of Iowa has four divisions.
Southern district of Iowa has three divisions.
District of Kentucky has two divisions.
Eastern district of Louisana has two divisions.
Western district of Louisana has three divisions.
Western district of Michigan has two divisions.
Western district of Minnesota has six divisions.
Northern district of Mississippi has two divisions.
Southern district of Mississippi has three divisions.
Eastern district of Missouri has two divisions.
Western district of Missouri has four divisions.
District of North Dakota has four division.
District of Ohio has two divisions.
District of South Dakota has three divisions.
Eastern district of Tennessee has two divisions.
District of Washington has four divisions.

In all the legislation pertaining to the subdivisions in all these States in all these districts, the word "division" is used invariably. The question which naturally arises is, why was the word "division" used in regard to all them, and the word "district" in reference to South Carolina?

It appeared from the proceedings relative to the act (May 28, 1896), that a bill for the appointment of a district attorney and marshal for the western district of South Carolina was then pending in both Houses. The Senate bill passed that body on January 7, 1897 (Cong. Rec., p. 533), unanimously. In the course of the proceedings Senator Hoar, chairman of the Judiciary Committee, in part, said:

> "This bill was considered by the Judiciary Committee and reported at the last session. It had the support of the Senators from South Carolina and also support from the bar of that State. Of course, the Senate is familiar with the condition of South Carolina. There have been two judicial districts there for a good while, but the marshal and district attorney for one of the districts have performed the duties of the other. This bill provides for a separate marshal and separate district attorney.
>
> "If this bill should pass, then, of course, it will be necessary to have a change in the proper appropriation bill."

. . . . . .

Again, on the same page, he said:

> "This bill was reported from the Judiciary Committee on full consultation, as I stated. That committee also reported as to salaries in a general salary bill for all the district attorneys in the country. That was referred to the Appropriations Committee and put on an appropriation bill, and was settled after going into conference. I was on that conference committee, but the final action on the conference report took place after I left for Europe. But I am sure it was arranged."

Mr. Tillman said:

> "If the Senator will allow me, it recognizes a difference in the two districts, and fixes the salary for each district separately."

. . . . . .

> Mr. HOAR. "I can give it to the Senator. It is just as I stated it. The provision is:
>
> "'For the eastern and western districts of the district of South Carolina, $4,500, $2,500 of which shall be for the performance of the duties of the western district.'"
>
> . . . . .
>
> Mr. TILLMAN. "The salaries are separated."

The bill was reported to the Senate without amendment and passed.

The bill was sent to the House and referred to the Judiciary Committee, from which it was never reported. But we are bound to presume that, as no dissenting voice was raised as to there being two districts when the act (May 28, 1896) was debated, it did not fail of passage on that account.

All know how difficult it is to get legislation through the House. If it were not going out of the record to do so, it might be stated that the then district attorney and marshal for the eastern district contributed to its defeat on account of the pecuniary loss which would have resulted to them by having their salaries reduced from $4,500 to $2,000 a year.

BRIEF REVIEW OF THE JUDGMENTS.

The Chief Justice, on page 2 of the opinion, asks the question:

> "Were there at that time—December, 1894—two judicial districts in South Carolina within the intent and meaning of the Constitution and the acts of Congress in that behalf?"

By which it is clear that that was deemed a pivotal point in the case—one which, if answered affirmatively, must needs result in a reversal of the judgments. The matter is then discussed, the reasons given and the authorities cited,

by which a negative conclusion is reached, and hence, an affirmance the consequence.

The learned Chief Justice, after commenting upon divers acts, takes up Section 546, Revised Statutes, on page 6, and in respect thereto, uses the following language:

> "When, then, Congress enacted this Section, it seems to have construed the Act of 1823, not as dividing the State into two judicial districts, as indicated in the title of the act, but into two districts in the sense of geographical divisions, which is in harmony with the language used in the body of the act. At all events, the phraseology of Section 546 is only consistent with the conclusion that the State constituted but one judicial district, containing two divisions, which were called the eastern and western districts of the district of South Carolina."

So that it not only appears that the question of two districts was esteemed of vital consequence in the case, but that it inevitably hinged upon the proper interpretation of that section—546; and not only that, but it is obvious that it depended upon the construction of the phrase "of the district" for, with these words expunged, there could not possibly be a shadow of a doubt but what the section in question constituted two districts. With the advisement that counsel were able to give the court at the argument as to the true exposition of that phrase in that section, it is not surprising that the conclusion should have been reached that there was "but one district, containing two divisions," but since the discovery of Durant's Manuscript Revision—all of which have been detailed before, by which it clearly appears that the phrase "of the district" was left in the section by a mere clerical error, it would now seem that there cannot be two opinions on the subject—that there are, by that section, two districts in South Carolina.

In support of his position, the learned Chief Justice calls attention to the fact that all this time, and even now there

is "but one judge, one attorney and one marshal for the district of Carolina." But it will be remembered that by the express terms of Sections 552, 767 and 776, there shall be one judge for "both districts in South Carolina," and that the district attorney and marshal for the eastern district shall act as such for the western district. So, instead of this being an argument in favor of *one district*, it supports the theory that there are two.

Allusion is made to the Ku Klux trials, in 1871, before the adoption of the Revised Statutes, in 1874, where it was held that the circuit court had jurisdiction over both districts. But this decision, apart from its unsoundness, being prior to the Revised Statutes, which, even if it had not been done before, established two districts in the State with a circuit and district court in each, and hence is of no value as authority, and the circuit decisions U. S. *vs.* Butter, 1 Hughes, 457, and Young *vs.* Ins. Co., 29 Fed. Rep. 273, simply followed the precedent of the Ku Klux trials and were decided, no doubt, without an examination of the Revised Statutes. But however this may be, the Act of February 6, 1889, enacted, of course, since the rendition of the three decisions above mentioned, created a full-fledged circuit court in the western district and, hence, repealed all prior laws inconsistent therewith, whether found in statutes or decisions, and remains intact to-day. This act, while briefly touched upon by the learned Chief Justice, was evidently overlooked in its full scope and effect, since it is difficult to conceive how it would be possible when its provisions are examined, for any conclusion to be reached that there is "but one district."

The Acts of April 26, 1890 (26 Stat. 71), and May 28, 1896 (29 Stat 180, 182), have been hereinbefore fully examined and need no further notice here. They do not disturb the previous law on the subject, but, on the contrary, are in harmony with it.

It will be remembered that Mr. Chief Justice Fuller is a member of all the circuit courts of the fourth circuit, which embraces South Carolina. So was his immediate predecessor. Ever since his accession to the bench—a decade ago—he has been participating in the hearing of causes in that State in conjunction with the district and circuit judges, where it was assumed that (following the decisions in the Ku Klux trials, United States *vs.* Butler, and Young *vs.* Insurance Co., *supra*), the circuit court had jurisdiction throughout both districts. Naturally, therefore, when the present causes were argued, and when it so occurred that to him was assigned the duty of deciding them in the first instance, subject, of course, to confirmation by the other members of the bench, he had preconceived ideas on the subject. Having, of course, confidence in the wisdom and judgment, as well of his predecessor as of his colleagues of the circuit bench, it is simply impossible to tell just how far his previous opinions may have influenced his mind. No one can know. He himself cannot. Besides, pride of opinion may have played a conspicuous part. In addition, judicial cognizance is taken of the fact that during the interval which elapsed between the arguments in the courts—January 21, 1898—and the rendition of the judgment—February 21, 1898—the learned chief justice sat in the Circuit Court of Appeals in Richmond, with other members of the circuit court for that circuit, who, of course, had already decided the question adversely to the position contended for by plaintiff in error.

Besides, the great influence, natural and legitimate, of course, which the learned Chief Justice wields over his associates of the Supreme Bench—owing to his eminent qualities of head and heart—may have caused them, in view of the fact that the question depended solely upon a long series of local legislative acts with which it would be inferred that he would be far more familiar than themselves, and involved

no elementary principle of law, to have deferred to him in this instance far more than is their wont in other cases.

These matters are mentioned, not as being, of themselves, of controlling weight, of course, but for the purpose of inducing each individual member of the court to carefully and diligently revise the judgments and the grounds upon which they are rendered, to the end that it may be seen whether or not mistake has been committed.

Second Point.

The exceptions contain evidence that there was misjoinder of defendants and offenses.

The trial courts certified in the bill of exceptions that the evidence showed that several distinct offenses committed by different defendants had been joined. This court, therefore, overlooked this fact in deciding that the bill of exceptions does not contain the evidence, and, therefore, error was committed in declining to consider the question whether an election should have been compelled by the court below. An examination of the records—Exception No. 4 in Case No. 53, and Exception No. 3 in case No. 175—clearly show that the trial court so certified.

True, the bill of exceptions does not set out the testimony of the witnesses as delivered on the stand; but, by repeated rulings of this court, not only is this not necessary, but it is bad practice to encumber the record with more of the evidence than is necessary to the point involved; and certifying the substance of the evidence—what it tended to prove—will suffice. Some courts express it that the *facts*, and not the evidence of them, only should be incorporated.

R. R. *vs.* Ives, 144 U. S. 414.
Pritchard *vs.* Budd, 76 Fed. Rep.

It is, therefore, submitted that the question should have been considered, and if so, the authorities cited in the brief of plaintiff in error at the argument necessitate a reversal of the judgment.

Third Point.

Record fails to show that a grand jury of not less than twelve nor more than twenty-three men found the indictments.

The court overlooked the fact that the records fail to show that a grand jury of not less than twelve nor more than twenty-three men found the indictments. This defect renders the proceedings null. Objection can be taken at any time, on error or in arrest. Authority on this point is needless.

Although this was not excepted to at the trial, yet under numerous decisions of this court, error apparent on the record can be considered, even though not excepted to nor incorporated into a bill of exceptions. Simply raising the point at the argument is sufficient.

Crain *vs.* U. S., 162 U. S. 646.

These objections can't be waived.

Hopt *vs.* Utah, 110 U. S. 574.

CONCLUSION.

Absolute certainty of the incorrectness of the judgments is not an essential condition of the granting of a rehearing. The sole requisite is that doubts of its correctness are entertained which it is supposed will be removed by further discussion at the bar. Such seems to be the rule of this court as illustrated by the practice and as exemplified by numerous adjudications. Tested by it, and without giving anything like a recapitulation, a few observations will now be made upon one ground of the motion, from which it would seem that a rehearing must be the inevitable consequence :

As to there being two districts.

1. In the multitude of acts on the subject—and their name is legion—from February 21, 1823, down to the

present time, the word "district" is used every time and the word "division" not once. The act in question uses "judicial district," and says "The State" is divided, &c., not "The district" is divided, &c.

2. The Act of August 16, 1856, vested "the district court of the western district of South Carolina with circuit court jurisdiction." Was a separate and distinct district and circuit court ever created before or since in the United States in a *division* of a district? *Cui bono?*

3. Aside from Durant's manuscript revision having been discovered, which demonstrates that Congress, by the Revised Statutes, even if it had not been done before, intended to, and did, establish two districts in the State—clearly showing that the phrase "of the district" in Section 546 was a clerical error—there could be no question in regard to it when construed in connection with Sections 530, 531, 551, 552, 571, 572, 767, 776, and 817, Revised Statutes.

4. Aside from every solitary statute passed on the subject since the Revised Statutes recognizing two districts, the Act of February 6, 1889, plainly abolished circuit court powers of the district court for the western district and created a full-fledged circuit court, *eo nomine*, therein.

5. In addition to the opinion of Congress, Attorney General Harmon, and Senator McLaurin (formerly Attorney General of South Carolina) in the discussion of the Act of May 28, 1896, in its passage through that body that there are two districts, there is the deliberate and unanimous judgment of the United States Senate on January 7, 1897, when that body passed the bill authorizing the appointment of a district attorney and marshal for the western district.

CHARLES C. LANCASTER,
A. H. GARLAND,
JOHN L. McLAURIN.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

Nos. 53 and 175 (Consolidated).

CHAS. P. BARRETT, PLAINTIFF IN ERROR.

vs.

THE UNITED STATES.

In Error to the Circuit and District Courts of the United States for the Districts of South Carolina.

Second Petition and Brief for Re-hearing.

Statement.

The legal proposition upon which plaintiff in error mainly relied for a reversal of the judgment was, that South Carolina composed two judicial districts—the Eastern and Western. But this court, on February 21, 1898, speaking by Mr. Chief Justice Fuller, held that that State constituted "but one district, containing two divisions," and, therefore, judgments of affirmance were rendered. Subsequently, a petition for rehearing, supported by an elaborate and exhaustive brief, was filed. which, only a few days ago, was denied. Counsel for plaintiff in error, in view of the grave consequences resulting to their client, and especially since this court has unquestionably committed mistake of law, makes the second application for a rehearing:

Application for Re-hearing.

To the Supreme Court of the United States:

Chas. P. Barrett, plaintiff in error, makes the second application for a rehearing, not only upon the grounds stated in his former petition for that purpose, but for the following additional reasons, to-wit:

Because the court failed to give full force and effect to the following acts of Congress:

1. The Act of February 21, 1823, [3 Stat., 726,] re enacted as Sections 546, 551, 552, 767 and 776, Revised Statutes.

2. The Act of August 16, 1856, [2 Stat., 43,] re-enacted as Sections 571 and 817, Revised Statutes.

3. The Act of February 6, 1889, [25 Stat., 655].

4. The Act of July 23, 1892, [27 Stat., 291].

5. The court failed to give full force and effect to the manuscript revision of Thomas J. Durrant revising the commissioner's draft.

CHAS. P. BARRETT, *Petitioner.*

Certificate of Counsel.

I certify that, in my judgment, the petition is well founded in law.

CHARLES C. LANCASTER.

Brief and Argument.

The extraordinarily grave consequences to their client, himself a member of the legal profession for the past quarter of a century, his *all* being imperiled—his honor, his liberty, his property, and his life itself, since there is little prospect of his living but a brief period in prison—furnish one cause for the constancy and zeal exhibited in his behalf. But while it is one, it is not the sole cause. *The main inspiring reason is the unquestionable incorrectness, in point of law, of the judgments against him holding that South Carolina composes "but one district, containing two divisions.* This is the conclusion after the most earnest, dispassionate, and protracted study of the subject, and in the light, both of the brief of counsel for the Government and the opinion announced by the learned Chief Jus-

tice. Without desiring to seem dogmatic, there is not and cannot be a shadow of doubt in regard to it by one who has mastered the subject.

The views of petitioner's counsel are not singular. Far otherwise. While there is no dissenting opinion, it is indisputable that the vote on affirming the judgments was not unanimous. The records and briefs show that in 1896 Mr. Judson Harmon, then United States Attorney General, in an official opinion, not only declared that South Carolina constituted two districts, but asserted that Section 546, United States Revised Statutes, which he cited as his authority, had not been repealed by subsequent legislation. And right here it will be observed that said Section 546 is the statute upon which the court based its opinion that there was but one district. Senator McLaurin, formerly Attorney General of that State, Senator Hoar—and in fact the whole of the United States Senate—concurred in that view. So did such eminent lawyers as Culberson, Bailey, *et al.* in the House. And it will be remembered that Assistant Attorney General Boyd, in his oral argument before the court, January 21, 1898, in reply to a question propounded to him by Mr. Justice Gray, conceded that there were two districts, but contended that the circuit court had jurisdiction over both.

In what way can the Government be damnified by a rehearing? None whatever. Hence, in view of the circumstances, would it not tend to promote justice by granting it where the matter can be reargued before a full bench—Mr. Justice McKenna took no part before—and where counsel on each side can again be heard? To do otherwise might, as all will admit, work injustice. And at the rehearing, if no error has been committed, the judgments can be affirmed. This court possesses plenary power in the premises and can continue it over till the next term—only about four months hence—or pass any other order to meet its views of propriety and justice. If this is done, of conrse, a re call of the mandate will be necessary and a motion is hereby made for that purpose.

It goes without saying that counsel for petitioner would not have filed this application had a vestige of a doubt been entertained respecting their contention.

CHARLES C. LANCASTER, *Counsel for Petitioner.*,
JOHN L. McLAURIN, *Counsel for Petitioner.*

BARRETT *v.* UNITED STATES (No. 1).

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

No. 53 Argued January 21, 1898. — Decided February 21, 1898.

When a bill of exceptions does not contain the evidence, it is impossible for this court to know the ground on which the trial court proceeded in overruling a motion on the evidence to compel the district attorney to elect, and an exception in that regard will not be considered.

In December, 1894, when the proceedings took place which are questioned in this case, there were not two judicial districts in the State of South Carolina, to the territorial limits of each of which the jurisdiction of the Circuit Court of the United States was confined.

The legislation on this subject from the commencement of the Government reviewed.

BARRETT was indicted, with others, as stated in the caption of the transcript of the record, "at a Circuit Court of the United States for the Fourth Circuit in and for the District of South Carolina, begun and holden at Columbia in the district aforesaid, on the fourth Monday in November, 1894, before the Honorable Wm. H. Brawley, United States Judge for the District of South Carolina, holding said Circuit Court according to the form of the act of Congress in such cases made and provided," for conspiracy to commit an offence against the United States, under sections 5440 and 5480 of the Revised Statutes, and, having been duly tried, was found guilty, and sentenced to imprisonment and fine.

To review this judgment, this writ of error was prosecuted.

The indictment commenced as follows:

"United States of America, } To wit: In the Circuit Court.
District of South Carolina, }

"At a stated term of the Circuit Court of the United States for the District of South Carolina, begun and holden at Columbia, within and for the district aforesaid, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and ninety-four, the jurors of the United States of America within and for the district aforesaid upon their

oaths respectively do present that Charles P. Barrett, [and others naming them,] together with divers other evil-disposed persons to the jurors aforesaid unknown, late of the district aforesaid, on the first day of July, in the year of our Lord one thousand eight hundred and ninety-two, at Spartanburg, in the State of South Carolina aforesaid, in the district aforesaid and within the jurisdiction of this court, being persons of evil minds and dispositions, wickedly devising and intending to commit the offence against the United States hereinafter set forth, fraudulently, maliciously and unlawfully did combine, conspire, confederate and agree together between and among themselves to commit against the United States this offence — etc., etc."

Certain exceptions were taken to the action of the court in refusing to sustain a challenge to the array of both grand and petit jurors on the ground that they were drawn from both the eastern and western districts of South Carolina, when the alleged offence was charged in the indictment to have been committed in the county of Spartanburg in the western district of said State; to the order of the court overruling defendant's demurrer to the indictment on the ground that the offence was charged to have been committed in the county of Spartanburg, in the State of South Carolina, the same being in the western district of said State, although the indictment was found in the city of Columbia in the county of Richland in the eastern district thereof; to the refusal of the court to sustain defendant's plea to the jurisdiction on the ground that, although the alleged offence was charged to have been committed in the county of Spartanburg, the same being in the western district of South Carolina, the trial was sought to be had in the city of Columbia in the county of Richland, in the eastern district of said State; to the denial by the court of defendant's motion that the district attorney be required to elect on which one of several conspiracies disclosed by the evidence to have been committed, if any, he would ask for a conviction; and to the refusal of the court to arrest judgment because the grand jurors who found the indictment and the petit jurors who found the verdict were drawn from the west-

ern and eastern districts of South Carolina, although the offence was alleged to have been committed in the county of Spartanburg in the western district; because the indictment was found in the county of Richland in the eastern district at a time not authorized by law for the sitting of the United States court for the western district, and because the trial was had in the county of Richland in the eastern district for an offence committed in the western district.

Mr. Charles C. Lancaster for plaintiff in error.

Mr. Assistant Attorney General Boyd for defendant in error.

Mr. Chief Justice Fuller, after stating the case, delivered the opinion of the court.

As to the action of the court overruling defendant's motion on the evidence to compel the district attorney to elect, the bill of exceptions does not contain the evidence, and it is impossible for this court to know the ground on which the Circuit Court proceeded. The exception in that regard need not therefore be considered.

In respect of the other exceptions, they all present the same objection in different forms, namely, that the State of South Carolina was divided into two judicial districts, and that an indictment could not be lawfully found in the Circuit Court of the United States held in the eastern district or a trial be therein had, for a criminal offence committed in the western district.

The Constitution provides that the trial of crimes shall be had in the State "where the crime shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed," Art. III, § 2, cl. 3; and by Amendment VI, that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed,

which district shall have been previously ascertained by law."

This indictment was found December 3; the trial had December 6 to 11; and the defendant sentenced December 12, 1894, in the Circuit Court in session at Columbia. Were there at that time two judicial districts in South Carolina within the intent and meaning of the Constitution and the acts of Congress in that behalf?

The circuit court of each judicial district sits within and for that district; and its jurisdiction as a general rule is bounded by its local limits. *Toland* v. *Sprague*, 12 Pet. 300, 328; *Devoe Manufacturing Company, Petitioner*, 108 U. S. 401. At the same time courts may be required to be held at different places in a judicial district, and prosecutions for offences committed in certain counties may be required to be tried, and writs and recognizances to be returned at each place, but this does not affect the power of the grand jury sitting at either place to present indictments for offences committed anywhere within the district. *Logan* v. *United States*, 144 U. S. 263. As to where trials shall be had in a judicial district depends entirely on the legislation upon the subject. *Rosencrans* v. *United States*, 165 U. S. 257; *Post* v. *United States*, 161 U. S. 583.

By the judiciary act of September 24, 1789, c. 20, the then United States were divided into thirteen districts, of which New Hampshire, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Georgia and South Carolina each constituted one district, called by the name of the State, as for instance, "South Carolina district;" while a part of the State of Massachusetts was erected into a district "called Maine district," and a part of the State of Virginia into a district "called Kentucky district," the remaining part of the State of Massachusetts being made a district "called Massachusetts district," and the State of Virginia, except so much thereof as was thereby made the district of Kentucky, a district "called Virginia district." 1 Stat. 73.

The plan was to make each of the States a judicial district, and to direct the appointment of a judge, a clerk to be ap-

pointed by him, a district attorney and a marshal, for each district. But that part of Massachusetts now constituting the State of Maine and that part of the State of Virginia now forming the State of Kentucky were erected into independent districts under the names of "Maine District" and "Kentucky District," and the district court established in each was invested with the powers of a Circuit Court.

By the fourth section these districts, "except those of Maine and Kentucky," were divided into three circuits, called the eastern, the middle and the southern circuits; and it was provided that circuit courts should be held "in each district of said circuits," by two of the justices of the Supreme Court and "the district judge of such districts."

North Carolina having ratified the Constitution, November 21, 1789, Congress by the act of June 4, 1790, c. 17, 1 Stat. 126, gave effect to the judiciary act of 1789 in that State, erecting it into a district to be called "North Carolina district," establishing a district court with one judge, and annexing the district to the Southern circuit. Rhode Island having ratified the Constitution, May 29, 1790, a similar act to give effect to the judiciary act was passed June 23, 1790, c. 21, 1 Stat. 128, by which Rhode Island was annexed to the Eastern circuit.

From the first, then, district courts have been, in exceptional instances, vested with Circuit Court jurisdiction.

On February 21, 1823, an act was passed, c. 11, entitled "An act to divide the State of South Carolina into two judicial districts," as follows: "That the State of South Carolina be, and the same is hereby divided into two districts, in manner following, that is to say: the districts of Lancaster, Chester, York, Union, Spartanburg, Greenville, Pendleton, Abbeville, Edgefield, Newberry, Laurens and Fairfield; shall compose one district, to be called the western district, and the residue of the State shall form one other district to be called the eastern district. And the terms of the said district court, for the eastern district, shall be held at Charleston, at such times as they are now directed by law to be holden. And for the trial of all such criminal and civil causes, as are by law

cognizable in the district courts of the United States which may hereafter arise or be prosecuted, or sued, within the said western district, there shall be one annual session of the said district court holden at Laurens court-house, to begin on the second Monday in May in each year; to be holden by the district judge of the United States of the State of South Carolina; and he is hereby authorized and directed to hold such other special sessions as may be necessary for the despatch of the causes in the said court, at such time or times as he may deem expedient, and may adjourn such special sessions to any other time previous to a stated session." 3 Stat. 726.

By an act approved May 25, 1824, c. 145, entitled "An act to alter the times of holding the Circuit and District Courts of the United States for the district of South Carolina," 4 Stat. 34, it was provided that the Circuit Court "for the district of South Carolina" should annually be held "at Charleston on the second Tuesday of April; and at Columbia on the third Tuesday of November," etc.; and that "the times of holding the district court of the United States at Laurens court-house, South Carolina, shall be so altered that the said court shall hereafter convene on the Tuesday next ensuing after the adjournment of the Circuit Court of the United States at Columbia."

On March 3, 1825, this act was amended by providing that "the Circuit Court for the district of South Carolina at Columbia, South Carolina, shall commence on the fourth Tuesday of November, annually." 4 Stat. 124, c. 78.

By an act of May 4, 1826, c. 37, the sessions of the Circuit Court "for the District of South Carolina" were again changed, 4 Stat. 160; and again February 24, 1829, c. 19, 4 Stat. 335.

By the act of March 1, 1845, 5 Stat. 730, c. 39, it was provided, referring to the Circuit Court, "that the spring term of said court shall be held in and for the district of South Carolina at Charleston, on the Wednesday preceding the fourth Monday of March."

By an act approved August 16, 1856, c. 119, entitled "An

act to alter the time for holding the district court in South Carolina, and for other purposes," 11 Stat. 43, it was provided that so much of the act of May 25, 1824, as provided "for holding the District Court of the United States at Laurens court-house, South Carolina, on the Tuesday next ensuing after the adjournment of the Circuit Court of the United States at Columbia, be and the same is hereby repealed; and that in place thereof the said court shall be held at Greenville court-house, South Carolina, on the first Monday in August in each year." And it was further provided that the jurors for said court, grand as well as petit, should be drawn "from the inhabitants of Greenville district, South Carolina," except that the jurors for the first term of the court should be drawn at "the term of the district court to be holden in the city of Charleston;" and further that "the said district court for Greenville, in addition to the ordinary jurisdiction and powers of a District Court of the United States, shall have jurisdiction of all causes (except appeals and writs of error) which now are or may be hereafter made cognizable in a Circuit Court of the United States, and shall proceed in the same manner as a Circuit Court."

The act of July 15, 1862, c. 178, 12 Stat. 576, provided that "the districts of South Carolina, Georgia, Alabama, Mississippi and Florida, shall constitute the fifth circuit;" and repealed the act or acts which vested circuit court powers in the district courts for the districts of Texas, Florida, Wisconsin, Minnesota, Iowa and Kansas; while by the act of March 3, 1863, c. 100, 12 Stat. 794, the districts of California and Oregon were constituted the tenth circuit; and so much of any act or acts as vested in the district courts for California and Oregon the power and jurisdiction of circuit courts was repealed.

By the act of July 23, 1866, c. 210, 14 Stat. 209, it was provided that "the districts of Maryland, West Virginia, Virginia, North Carolina and South Carolina shall constitute the fourth circuit."

The act of April 10, 1869, c. 22, 16 Stat. 44, authorized the appointment of a circuit judge "for each of the nine existing judicial circuits;" but that act, by the act of July 1, 1870, c.

186, was not to be construed "to require a circuit court to be held in any judicial district in which a circuit court was not required to be held by previously existing law." 16 Stat. 179.

In the Ku Klux Cases, tried in the Circuit Court at Columbia, in the fall of 1871, before Circuit Judge Bond and District Judge Bryan, Mr. Reverdy Johnson objected to the issue of a venire to summon additional grand and petit jurors "from the body of the district" embracing the whole State, though he admitted that "it is true that the circuit court has jurisdiction, as a court, over the entire district of South Carolina." The court ruled that so far as the circuit court was concerned there was but one district in South Carolina. South Carolina Ku Klux Trials, pp. 8, 9, 10.

The Revised Statutes were adopted June 22, 1874, (the second edition being published in 1878,) and contain the following sections:

"SEC. 530. The United States shall be divided into judicial districts as follows:

"SEC. 531. The States of California, Connecticut, Delaware, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, Oregon, Rhode Island, Vermont and West Virginia, each, constitute one judicial district."

"SEC. 546. The State of South Carolina is divided into two districts, which shall be called the eastern and western districts of the district of South Carolina. The western district includes the counties of Lancaster, Chester, York, Union, Spartanburg, Greenville, Pendleton, Abbeville, Edgefield, Newberry, Laurens and Fairfield, as they existed February 21, 1823. The eastern district includes the residue of said State."

"SEC. 551. A district judge shall be appointed for each district, except in the cases hereinafter provided. Every such judge shall reside in the district for which he is appointed, . . .

"SEC. 552. There shall be appointed in each of the States of Alabama, Georgia, Mississippi, South Carolina and Tennessee, one district judge, who shall be district judge for each of the districts included in the State for which he is appointed, and shall reside within some one of the said districts. . . ."

"SEC. 571. The district courts for the western district of Arkansas, the eastern district of Arkansas at Helena, the northern district of Mississippi, the western district of South Carolina and the district of West Virginia, shall have in addition to the ordinary jurisdiction of district courts, jurisdiction of all causes, except appeals and writs of error, which are cognizable in a circuit court, and shall proceed therein in the same manner as a circuit court.

"SEC. 572. The regular terms of the district courts shall be held at the times and places following: . . . In the eastern district of South Carolina, at Charleston, on the first Monday in January, May, July and October. In the western district, at Greenville, on the first Monday in August."

"SEC. 604. The judicial districts of the United States are divided into nine circuits as follows: . . . Fourth. The Fourth Circuit includes the districts of Maryland, Virginia, West Virginia, North Carolina and South Carolina. . . ."

"SEC. 608. Circuit courts are established as follows: One for the three districts of Alabama, one for the eastern district of Arkansas, one for the southern district of Mississippi and one for each district in the States not herein named; and shall be called the circuit courts for the districts for which they are established."

"SEC. 658. The regular terms of the circuit courts shall be held in each year, at the times and places following. . . : In the district of South Carolina, at Charleston, on the first Monday in April; and at Columbia, on the fourth Monday in November."

"SEC. 767. There shall be appointed in each district, except in the middle district of Alabama, and the northern district of Georgia, and the western district of South Carolina, a person learned in the law, to act as attorney for the United States in such district. . . . The district attorney of the eastern district of South Carolina shall perform the duties of district attorney for the western district of said State."

Section 776 makes similar provision as to United States marshals for said districts.

"SEC. 563. The district courts shall have jurisdiction as follows:

"First. Of all crimes and offences cognizable under the authority of the United States, committed within their respective districts, . . . the punishment of which is not capital. . . ."

"SEC. 629. The circuit courts shall have original jurisdiction as follows: . . . Exclusive cognizance of all crimes and offences cognizable under the authority of the United States, except where it is or may be otherwise provided by law, and concurrent jurisdiction with the district courts of crimes and offences cognizable therein."

The Revised Statutes were compiled under an act of June 27, 1866, c. 140, providing "for the revision and consolidation of the statute laws of the United States," 14 Stat. 74, the appointment of three commissioners being thereby authorized to accomplish the work. These commissioners were directed to arrange the statutes and parts of statutes "under titles, chapters and sections, or other suitable divisions and subdivisions, with headnotes briefly expressive of the matter contained in such divisions; also with side notes so drawn as to point to the contents of the text and with references to the original text from which each section is compiled."

By the act of March 2, 1877, c. 82, 19 Stat. 268, the preparation and publication of a new edition of the Revised Statutes was provided for, the work to be done by a single commissioner, who was required to add to the marginal references made in the previous revision.

In *United States* v. *Lacher*, 134 U. S. 624, 626, we said: "If there be any ambiguity in section 5467, inasmuch as it is a section of the Revised Statutes, which are merely a compilation of the statutes of the United States, revised, simplified, arranged and consolidated, resort may be had to the original statute from which this section was taken to ascertain what, if any, change of phraseology there is and whether such change should be construed as changing the law. *United States* v. *Bowen*, 100 U. S. 508, 513; *United States* v. *Hirsch*, 100 U. S. 33; *Myer* v. *Car Company*, 102 U. S. 1, 11. And it is said that this is especially so where the act authorizing the revision directs marginal references

as is the case here. 19 Stat. c. 82, § 2, p. 268; Endlich on Int. Statutes, § 51."

Section 546 appears under "Title XIII. The Judiciary. Chapter one. Judicial Districts;" and the cross-reference in the margin is to the act of "21 Feb. 1823, c. 11, § 1, v. 3, p. 726."

When, then, Congress enacted this section it seems to have construed the act of 1823, not as dividing the State into two judicial districts, as indicated in the title of the act, but into two districts in the sense of geographical divisions, which is in harmony with the language used in the body of the act. At all events, the phraseology of section 546 is only consistent with the conclusion that the State constituted but one judicial district, containing two divisions, which were "called the eastern and western districts of the district of South Carolina."

And it should be remembered that there was, during all this time, (and this has prevailed from thence hitherto,) but one judge, one attorney and one marshal for the district of South Carolina.

It is said that in the first draft of the commission to revise the statutes, the commissioners recommended the adoption of a section corresponding to section 546, in this language: "The district of South Carolina is divided into two divisions, which will be called the eastern and western divisions of the district of South Carolina. The western division includes the counties of Lancaster, etc., as they existed February 21, 1823. The eastern division includes the residue of said State." And it is argued that because section 546 was couched in its present language, notwithstanding the recommendation, that it therefore follows that Congress intended to divide the State into two judicial districts. We cannot concur in that view. While the use of the word "division" might have been more felicitous, yet we think the meaning of the statute was sufficiently plain, and that it would be inadmissible to recur to the draft of the commissioners to create a doubt where none existed. Moreover, it would be a much greater stretch of construction to say that because Congress did not see fit to use the word "division," therefore it should be held that the

words actually employed, "of the district of South Carolina," were inadvertently inserted, and should be rejected altogether.

It should be noted that by section 608 Circuit Courts were established for each district in the States not therein named, the States specified being Alabama, Arkansas and Mississippi and yet that by section 571 certain district courts, including that for the western district of South Carolina, retained circuit court powers.

Nevertheless, it was held by Chief Justice Waite, sitting with Judge Bond in the Circuit Court in 1877: "As to the question of the jurisdiction of this court throughout the entire State of South Carolina, we decide, for the purposes of this trial, in favor of the jurisdiction. This is in accordance with the uniform practice of the court, without objection from any quarter, for nearly half a century." *United States* v. *Butler*, 1 Hughes, 457, 463.

And in 1886, it was said by Simonton, J., holding the Circuit Court: "All parts of the State of South Carolina are within the jurisdiction of this court. Its process runs all through the State. It does not know, in the sense which affects its jurisdiction, either the eastern or western district." *Young* v. *Merchants' Ins. Co.*, 29 Fed. Rep. 273, 275.

However we are relieved from considering the effect upon the jurisdiction of a Circuit Court having jurisdiction throughout a State, constituting a single judicial district, of a part of the district being subjected to the jurisdiction of the district court clothed with circuit court powers, as the act of February 6, 1889, c. 113, 25 Stat. 655, in terms "established a circuit court of the United States in and for the western district of Arkansas, the northern district of Mississippi and the western district of South Carolina, respectively, as the said districts are now constituted by law;" and withdrew circuit court powers from said district courts.

By the act of April 26, 1890, c. 165, 26 Stat. 71, it was provided that there should be "four regular terms of the Circuit Court of the United States for the District of South Carolina in each year, as follows: In the city of Greenville on the

first Monday of February and on the first Monday in August; in the city of Charleston on the first Monday of April; and in the city of Columbia on the fourth Monday of November;" and that "the office of the clerk of said court shall be kept in the cities of Charleston and of Greenville, and the clerk shall reside in one of the said cities and shall have a deputy in the other." And although the act then went on to prescribe terms "of the District Courts for the Eastern District of South Carolina," and "of the District Court in the Western District of South Carolina," we think the operation of the prior sections was not thereby affected.

It may be added that in the legislative, executive and judicial appropriation act of May 28, 1896, c. 252, §§ 7, 9, appropriations were made for the salaries (among others) of the United States district attorney "for the eastern and western districts of the district of South Carolina," and of the United States marshal "for the eastern and western districts of the district of South Carolina." 29 Stat. 140.

From this review of the statutes we are unable to arrive at any other conclusion than that in 1894, when these proceedings were had, there were not two judicial districts in the State of South Carolina, to the territorial limits of each of which the jurisdiction of the Circuit Court was confined; and that the exceptions in this regard must be held not to have been well taken.

It is also suggested in the brief for plaintiff in error that error supervened in that the record does not affirmatively show the issue of the venire for the grand and petit juries; nor that the defendant was arraigned; nor that he was personally present when the verdict was rendered and sentence pronounced.

But the record does show that the indictment was duly returned; that motions to quash the indictment and the venire of grand and petit juries were made and overruled; that the defendant pleaded "not guilty" to said indictment; that the trial came on on that issue, and a petit jury was duly empanelled and sworn; that trial was had and a verdict of guilty returned, and sentence thereon entered; and that no exceptions

were saved to any of these proceedings other than the exceptions before mentioned.

The result is that the judgment must be

Affirmed.

BARRETT *v.* UNITED STATES (No. 2).

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

No. 175. Argued January 21, 1898.— Decided February 21, 1898.

It having been decided in *Barrett* v. *United States, ante,* 218, that the State of South Carolina constitutes but one judicial district, it follows that the indictment in this case was properly remitted to the next session of the District Court of that district.

THE case is stated in the opinion.

Mr. Charles C. Lancaster for plaintiff in error.

Mr. Assistant Attorney General Boyd for defendants in error.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

This was an indictment for conspiracy under section 5440 of the Revised Statutes, found by the grand jury "in the Circuit Court of the United States for the District of South Carolina begun and holden at Columbia within and for the district aforesaid, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and ninety-four," and on motion of the "United States attorney for the District of South Carolina," was by the Circuit Court, January 30, 1895, by order entered on its minutes, "remitted from the Circuit Court of the United States for the district of South Carolina to the district court of the United States for the western district of South Carolina."

At the February term, 1895, of the District Court held at Greenville, in the western district, the District Judge presiding, the defendant pleaded not guilty; the cause was tried, defendant was found guilty, and, thereupon, was sentenced to imprisonment and fine. From this judgment a writ of error was prosecuted to this court.

On the trial defendant raised certain objections presented by exceptions, which are enumerated in a bill of exceptions; by demurrer that the indictment was found in the eastern district of South Carolina, although the crime was charged to have been committed in the western district; by preliminary plea, "that the jurors of the grand jury by whom the indictment was found were drawn, summoned and empanelled from both the eastern and western districts of South Carolina, instead of from the western district of said State alone;" that the indictment was found in the circuit court of the United States for South Carolina, held in the city of Columbia, in the eastern district of said State, and was remitted to the district court for the western district of said State; by motion on the close of the testimony for the United States, "that the attorney for the United States be required to elect on which one of the conspiracies he would ask for a conviction," that is, of several distinct conspiracies, which the evidence tended to show; by motion in arrest that the grand jurors, who found the indictment, were drawn, summoned and empanelled from both the districts when the crime was charged to have been committed in one of them; that the indictment was found in the eastern district at a time when there was no law authorizing the "holding any court of the United States for the western district of South Carolina;" because the indictment was remitted "not to the district court of the United States for the eastern district of South Carolina, but to the district court of the western district of said State."

The court overruled all these objections, in whatever form presented, and defendant excepted.

Sections 817, 1037 and 1038 of the Revised Statutes are as follows:

"SEC. 817. The grand and petit jurors for the district

court, sitting in the western district of South Carolina, shall be drawn from the inhabitants of said district who are liable, according to the laws of said State, to do jury duty in the courts thereof; and all jurors shall be drawn during the sitting of the court for the next succeeding term."

"SEC. 1037. Whenever the district attorney deems it necessary, any circuit court may, by order entered on its minutes, remit any indictment pending therein to the next session of the district court of the same district, where the offence charged in the indictment is cognizable by the said district court. And in like manner any district court may remit to the next session of the circuit court of the same district any indictment pending in the said district court. . . .

"SEC. 1038. Any district court may, by order entered on its minutes, remit any indictment pending therein to the next session of the circuit court for the same district, when, in the opinion of such district court, difficult and important questions of law are involved in the case; and thereupon the proceedings in such case shall be the same in the circuit court as if such indictment had been originally found and presented therein."

No objection was raised that the petit jury by which defendant was tried was not, and it was conceded at the bar that it was, in fact, drawn from the inhabitants of the western district of the district of South Carolina, and no complaint is preferred in that regard.

We have just decided that the State of South Carolina constitutes but one judicial district, and, this being so, the indictment was properly remitted, in accordance with section 1037, to the next session of the district court of that district, begun and holden on the first Monday of February, 1895, in the western district of the district.

All other questions have been disposed of adversely to plaintiff in error in the preceding case.

Judgment affirmed.